THE
INDIAN PENAL CODE

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PREFACE

TO THE NINTH EDITION.

THIS edition has been thoroughly and carefully revised and brought up to date. The object of this book being to enable students to understand and grasp the principles of criminal law and to apply them to concrete facts, cases that explain the object and purport of a section, or exemplify its significance, are all embodied. But it is not thought desirable to burden students with cases, whether recent or old, that only re-iterate the same principles or narrate similar facts.

The Summary of the provisions of the Code will present to a beginner a bird's-eye view of the Code. To one who has mastered the subject it will be useful for revision.

The Appendix contains questions set at the various law examinations. The questions will direct the attention of students to portions demanding special care.

Finally, it may be observed that a critical study of this book will enable a student to tackle any question set by a sensible examiner, and will also impart to him a sound knowledge of the criminal law of the land.

R. R.

April, 1920. D. K. T.

CONTENTS.

EXPLANATION OF ABBREVIATIONS.

A. C.	...Appeal Cases, Law Reports, from 1891—
A. & E.	...Adolphus and Ellis, 1834–1840 ; New Series, 1841–1852.
A.L.J.	...Allahabad Law Journal, from 1904—
A.W.N.	...Allahabad Weekly Notes, from 1881–1908.
Agra.	...Agra High Court Reports, 1866–1868.
All.	...Indian Law Reports, Allahabad Series, from 1876—
Archbold	...Archbold's Criminal Law.
B. & A.	...Barnwell and Alderson, 1817–1822, K.B.
Beav.	...Beaven's Reports, 1838–1866, Rolls.
B.L.R.	...Bengal Law Reports, 1868–1875.
Bing.	...Bingham's Cases, 1834–1840, C.P.
Bishop	...Bishop's Criminal Law.
Bom.	...Indian Law Reports, Bombay Series, from 1876—
B.H.C.	...Bombay High Court Reports, 1862–1875.
Bom. Cr.C.	...Criminal Cases of the Bombay High Court, from 1911—
Bom. L.R.	...Bombay Law Reporter, from 1899—
Boul.	...Boulnois' Reports, 1862–1875, Calcutta.
B. & C.	...Barnwell and Creswell, 1822–1830, K.B.
B. & S.	...Best and Smith, 1861–1869, Q.B.
Burma L.R.	...Burma Law Reports, from 1895—
Burr.	...Burrow's Reports, 1757–1771, K.B.
Cal.	...Indian Law Reports, Calcutta Series, from 1876—
C.L.R.	...Calcutta Law Reports, 1878–1883.
C.L.J.	...Calcutta Law Journal, from 1905—
C.W.N.	...Calcutta Weekly Notes, from 1896—
Camp.	...Campbell's Reports, 1808–1816, N.P.
C.B.	...Common Bench Reports, 1845–1856, C.P.
C.P.D.	...Common Pleas Division, Law Reports, 1875–1890.
C. & K.	...Carrington and Kirwan, 1843–1850, N.P.
C. & M.	...{ Carrington and Marsham, 1840–1842, N.P. Crompton and Meeson, 1832–1834, Exch.
C. & P.	...Carrington and Payne, 1823–1841, N.P.
Cl. & F.	...Clark and Finnelly, 1831–1846, N.P.
Coke.	...Coke's Reports, 1752–1816.
Collett.	...Collett's Comments on the Indian Penal Code.
Cox C.C.	...Cox's Criminal Cases, from 1843—
Cr. R.	...Criminal Rulings of the Bombay High Court, from 1862—
D. & B.	...Dearsley and Bell, 1850–1858, C.C.
Dears.	...Dearsley's Crown Cases, 1852–1856.

TABLE OF CASES.

ADDENDUM.

CHAPTER IX-A.

OF OFFENCES RELATING TO ELECTIONS.

171-A. For the purposes of this Chapter—

"Candidate," "electoral right" defined.

(*a*) "candidate" means a person who has been nominated as a candidate at any election[1] and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat: provided that he is subsequently nominated as a candidate at such election;

(*b*) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

COMMENT.

This chapter was introduced in the Code by the Indian Elections Offences and Inquiries Act (XXXIX of 1920). It seeks to make punishable under the ordinary penal law, bribery, undue influence, and personation, and certain other malpractices at elections not only to the Legislative bodies, but also to membership of public authorities where the law prescribes a method of election; and, further, to debar persons guilty of malpractices from holding positions of public responsibility for a specific period[1].

1 'Election'.—'Election' is defined as including election to all classes of public bodies where such a system is prescribed by law (*vide* Explanation 3 to s. 21, *supra*).

171-B. (1) Whoever—

Bribery.

(*i*) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

[1] Statement of Objects and Reasons, G. I. 1920, Part V, p. 185, s. 4.

(*ii*) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induee any other person to exercise any such right,

commits the offence of bribery: provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

COMMENT.

This section defines the offence of bribery at an election.

'Bribery' is defined primarily as the giving or acceptance of a gratification either as a motive or as a reward to any person, either to induce him to stand, or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election. It also includes offers or agreements to give or offer and attempts to procure a gratification for any person. 'Gratification' is already explained in s. 161 of the Penal Code and is not restricted to pecuniary gratifications or to gratifications estimable in money.[1]

Sub-clause (2)—'Offers.'—By this clause the attempt to corrupt is made equivalent to the complete act.

Treating.—Treating will be bribery if refreshment is given or accepted with the intent required by law.[2] The gist of the offence of treating is the corrupt inducement to the voter to vote or refrain from voting, which may be given at any time, although for obvious reasons it is usually given at or shortly before the election. 'Treating' is defined in s. 171-E.

1 Statement of Objects and Reasons, G. I. 1920, Part V, p. 135, s. 8.

2 *Ibid.*

Undue influence at elections.

171-C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(*a*) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(*b*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

COMMENT.

This section defines 'undue influence at elections.'

Undue influence at an election is defined as the voluntary interference or attempted interference with the right of any person to stand as, or not to stand, or withdraw from being, a candidate, or to vote or refrain from voting. This covers all threats of injury to person or property and all illegal methods of persuasion and any interference with the liberty of the candidates or the electors. The inducing or attempting to induce a person to believe that he will become the object of Divine displeasure is also interference. It is not, however, interference within the meaning of the clause to make a declaration of public policy or a promise of public action.

Where an attempt or threat is proved, it is unnecessary to prove that any person was in fact prevented from voting because the offence is complete.

171-D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name;

Personation at election.

and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

COMMENT.

This section defines 'personation at election'. It covers a person who attempts to vote in another person's name or in a fictitious name, as well as a voter who attempts to vote twice and any person who abets, procures, or attempts to procure, such voting.

171-E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Punishment for bribery.

Provided that bribery by treating shall be punished with fine only.

Explanation.—'Treating' means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171-F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for undue influence or personation at an election.

171-G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

False statement in connection with an election.

COMMENT.

False statements of fact in relation to the personal character or conduct of a candidate are penalised by this section.

Illegal payments in connection with an election.

171-H. Whoever, without the general or special authority in writing of a candidate, incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

COMMENT.

This section makes it illegal for any one, unless authorised by a candidate, to incur any expense in connection with the promotion of the candidate's election.

Failure to keep election accounts.

171-I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at, or in connection with, an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

COMMENT.

This section punishes failure to keep accounts of expenses incurred in connection with an election, if such accounts are required to be kept by any law or rule having the force of law.

THE
INDIAN PENAL CODE
(ACT XLV OF 1860.)

[Received the assent of the Governor-General on the 6th October 1860.]

CHAPTER I.
INTRODUCTION.

Preamble.

WHEREAS it is expedient to provide a general Penal Code for British India; it is enacted as follows:—

Title and extent of operation of the Code.

1. This Act shall be called THE INDIAN PENAL CODE and shall take effect throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Victoria, Chapter 106, entitled "An Act for the better government of India."

COMMENT.

The Indian Penal Code was drafted by the first Indian Law Commission of which Mr. (afterwards Lord) Macaulay was the President, and was submitted to the Governor-General of India in Council in 1837; but it was not until 1860 that it took its place on the Indian Statute Book.

Before 1860, the English criminal law, as modified by several Acts[1], was administered in the Presidency towns of Bombay, Calcutta and Madras. But in the mofussil, the Courts were principally guided by the Mahomedan criminal law, the glaring defects of which were partly removed by the Regulations of the local Governments. In 1827, the judicial system of Bombay was thoroughly revised and from that time the law which the criminal Courts administered was set forth in a Regulation[2] defining offences and specifying punishments. But in the other two sister Presidencies the Mahomedan criminal law was in force till the Indian Penal Code came into operation.

[1] 9 Geo. IV., c. 74; Acts VII and XIX of 1837; Act XXXI of 1838; Acts XXII and XXXI of 1839; Acts VII and X of 1844; Act XVI of 1852.

[2] XIV of 1827.

Offences committed prior to the operation of the Code.—Such offences are still punishable under the old Acts and Regulations[1].

Extension—The Code has been extended to several places by special legislation.

Punishment of offences committed within the said territories.

2. Every person[1] shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories[2].

COMMENT.

This section deals with the intra-territorial operation of the Code. It makes the Code universal in its application to every person in any part of British India for every act or omission contrary to the provisions of the Code. It prescribes no fixed time within which prosecution should be launched, as it follows the maxim *nullum tempus occurrit regi.*

1. 'Every person.'—Every person is made liable to punishment, without distinction of nation, rank, caste or creed, provided the offence with which he is charged has been committed in some part of British India. A foreigner who enters the British territories and thus accepts the protection of British laws virtually gives an assurance of his fidelity and obedience to them and submits himself to their operation. It is no defence on behalf of a foreigner that he did not know he was doing wrong, the act not being an offence in his own country. Though this is no defence, yet it is a matter to be considered in mitigation of punishment[2]. The accused was indicted for an unnatural offence committed on board of an East India ship, lying in St. Katherine's Docks. It was argued that he was a native of Bagdad where his act would not have amounted to an offence but it was held that that was not a legal defence[3].

There are, however, certain high officers of the Crown who are not amenable to the provisions of the Code in view of statutory exemptions created in their favour. Thus the Indian High Courts are not competent to hear, try or determine, any indictment or information against the Governor-General and Members of his Council, the Governors of Bombay and Madras and the Members of their Council and the Chief Justices and Judges of the Indian High Courts[4]. Offences committed by them shall be enquired of, heard, tried and determined, in the Court of King's Bench in London[5]. The trial of such offences is regulated by special procedure[6].

1 *Mulua*, (1878) 1 All. 599, contra *Diljour Misser*, (1877) 2 Cal. 225, F.B.

2 *Esop*, (1836) 7 C. & P. 456.

3 *Ibid.*

4 13 Geo. III., c. 63 ; 37 Geo. III., c. 142, s. 11 ; 9 & 10 Geo. III., c. 97, s. 3 ; 4 Geo. IV., c. 80, s. 7.

5 11 Will. IV., c. 12, 18 Geo. III., c. 63, s. 39; 21 Geo. III., c. 70, ss. 4, 5.

6 24 Geo. III., c. 25 and 26 Geo. III., c. 57.

There is no exception in favour of any one in the Penal Code, but the following persons are always exempted from the jurisdiction of criminal Courts of every country.

1. *Sovereign.*—The sovereign can do no wrong, and is, therefore, not liable to punishment. Blackstone says[1]: "No suit or action can be brought against the Sovereign even in civil matters, because no Court can have jurisdiction over him. For all jurisdiction implies superiority of power: authority to try would be vain and idle without an authority to redress: and the sentence of a Court would be contemptible unless that Court had power to command the execution of it: but who, says Finch, shall command the King? Hence it is, likewise, that by the law the person of the Sovereign is sacred even though the measures pursued in his reign be completely tyrannical and arbitrary: for no jurisdiction upon earth has power to try him in a criminal way; much less to condemn him to punishment. If any foreign jurisdiction had this power, and was formerly claimed by the Pope, the independence of the kingdom would be no more; and if such power were vested in any domestic tribunal, there would soon be an end of the constitution, by destroying the free agency of one of the constituent parts of the legislative power."

2. *Foreign Sovereign.*—The world being composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of these good offices which humanity dictates and its wants require all sovereigns have consented to a relaxation in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers. One sovereign being in no respect amenable to another; and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express license or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him[2]. The real principle on which the exemption of every sovereign from the jurisdiction of every Court has been deduced is that the exercise of such jurisdiction would be incompatible with his regal dignity—that is to say, with his absolute independence of every superior authority[3].

3. *Ambassadors.*—The immunity of an ambassador from the jurisdiction of the Courts of the country to which he is accredited is based upon his being the representative of the independent sovereign or State which sends him, and which sends him upon the faith of his being admitted to be clothed with the same independence of and superiority to all adverse jurisdiction as

[1] Kerr on Blackstone, Vol. 1, p. 224 (4th edn.).

[2] Per Marshall, C. J., in *Exchange v. M' Faddon*, (1812) 7 Cranch 116, 136.

[3] Per Brett, L. J., in *The Parlement Belge*, (1880) 5 P. D. 197, 207.

the sovereign authority whom he represents would be[1]. He does not owe even a temporary allegiance to the sovereign to whom he is accredited, and he has at least as great privileges from suits as the sovereign whom he represents. He is not supposed even to live within the territory of the sovereign to whom he is accredited, and, if he has done nothing to forfeit or waive his privilege, he is for all judicial purposes supposed still to be in his own country[2]. If he grossly offends, or makes an ill-use of his character, he may be sent home and accused before his master, who is bound either to do justice upon him or avow himself the accomplice of his crimes. But there is a great dispute among the writers on the law of nations, whether this exemption of ambassadors extends to all crimes, as well natural as positive ; or whether it only extends to such as are *mala prohibita* as coining and not to those that are *mala in se* as murder[3]. For a direct attempt against the life of the sovereign ambassador, or one of his suite, would directly be punishable by the state[4].

4. *Alien enemies.*—In respect of acts of war alien enemies cannot be tried by criminal Courts. "Aliens who in a hostile manner invade the Kingdom whether their King were at war or peace with ours, and whether they come by themselves or in company with English traitors, cannot be punished as traitors, but shall be dealt with by martial law[5]." If an alien enemy commits a crime unconnected with war, *e. g.*, theft, he would be triable by ordinary criminal Courts.

5. *Foreign army.*—When armies of one state are by consent on the soil of a foreign state they are exempted from the jurisdiction of the state on whose soil they are.

6. *War ships.*—Man-of war of a state in foreign waters are exempt from the jurisdiction of the state within whose territorial jurisdiction they are. Because a ship is not only a part of the territory of the state to which it belongs, but it is a floating fortress representing the independence of its state.

2. **'Within the said territories.'**—That is, the territories mentioned in 21 & 22 Vic., c. 106. If the offence is committed outside these territories it is not punishable under the Penal Code, unless it has been made so by means of special provisions such as ss. 3, 4, 108-A, &c., of the Code.

Territorial jurisdiction.—The general territorial jurisdiction of a state extends into the sea as far as a cannon-shot will reach, which is usually calculated to be a marine league, or three miles. The territories, strictly speaking, of a State include, therefore, not only the compass of land, in the ordinary acceptation of the term, belonging to such State, but also that portion of the sea lying along and washing its coast, which is commonly called the maritime territory. The laws of that State apply to acts committed within them. It is by the assent of nations that the three mile belt of sea

1 Per Brett, L. J., in *The Parlement Belge*, (1880) 5 P. D. 197, 207.

2 Per Lord Campbell in *Magdalena Steam Navigation Company* v. *Martin*, (1859) 2 E. & E. 94, 111.

3 Kerr on Blackstone, Vol. I, p. 224 (4th edn.). See also Phillimore's International Law, Vol. II, p. 202 (3rd. edn.).

4 Hale P. C., ss. 96-99.

5 Hawk. P. C., c. 17, s. 6.

has been brought under the dominion of every State. In the *Franconina case* the question arose whether the British Courts had jurisdiction over a foreigner in command of a foreign ship, who, whilst passing within three miles of English shores, ran into a British ship and caused loss of life[1]. It was held that in the absence of statutory enactment the Central Criminal Court had no power to try such an offence. This decision led to the passing of the Territorial Waters Jurisdiction Act, which has been extended to India. Prior to the decision in the *Franconia case* the Bombay High Court had held[2] that an offence committed on the high seas but within three miles from the coast of British India, as being committed within the territorial limits of British India, was punishable under the provisions of the Penal Code. In this case certain of the inhabitants of a village sallied out in boats and pulled up and removed a number of fishing-stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village. It was held that the local criminal Court had jurisdiction over the offenders, that the Penal Code was the substantive law applicable to the case, and that the offence amounted to mischief.

By the Territorial Waters Jurisdiction Act, s. 2, "an offence committed by a person, whether he is or is not a subject of His Majesty, on the open sea, within the territorial waters of His Majesty's dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly[3]."

"Offence," as used in this Act, means an act, neglect, or default of such a description as would, if committed within the body of a country in England be punishable according to the law of England (s. 7).

The "jurisdiction of the admiral" includes the jurisdiction of the admiralty of England and Ireland, or either of such jurisdictions as used in any Act of Parliament; and for the purpose of arresting any person, the territorial waters shall be deemed to be within the jurisdiction of any Judge, Magistrate, or Officer having power to issue warrants for arresting persons charged with offences committed within the jurisdiction of such Judge, Magistrate, or Officer (*ibid*).

"Territorial water" means such part of the sea adjacent to the coast as is deemed by international law to be within the territorial sovereignty of His Majesty; and for the purpose of any offence under this Act, it means any part of the open sea within one marine league of the coast measured from low-water mark (*ibid*).

Where the prisoner is not a subject of His Majesty, proceedings against him shall not be instituted in any of the dominions of His Majesty out of the United Kingdom, except with the leave and certificate of the Governor of that part (s. 3.)

[1] or *Keyn*, (1876) 2 Ex. D. 63.
[2] *Kastya Rama*, (1871) 8 B. H. C. (Cr. C.) 63.
[3] 41 & 42 Vic., c. 73.

As a result of international comity foreign ships of war are exempted from local jurisdiction. They enjoy this immunity because to hold otherwise would be inconsistent with the dignity, that is to say, the recognised independence of the foreign sovereign to whom they belong.

Punishment of offences committed beyond, but which by law may be tried within, the territories.

3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories shall be dealt with according to the provisions of this Code for any Act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

COMMENT.

This section and section 4 relate to the extra-territorial operation of the Code. This section only applies to the case of a person who at the time of committing the offence charged was amenable to a British Court[1]. A native Indian subject of his Majesty, being a soldier in the Indian army, committed a murder in Cyprus, while on service in such army, and was charged with this offence at Agra. It was held that he might be dealt with in respect of such offence by the criminal Courts at Agra[2].

The operation of the section is restricted to the cases specified in the Indian Extradition Act and the Criminal Procedure Code, ss. 186 and 188.

Extension of Code to extra-territorial offences.

4. The provisions of this Code apply also to any offence committed by—

(1) Any Native Indian subject of Her Majesty in any place without and beyond British India:

(2) Any other British subject within the territories of any Native Prince or Chief in India;

(3) Any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.

Explanation.—In this section the word "offence" includes every act committed outside British India which, if committed in British India, would be punishable under this Code.

[1] *Pirtai*, (1873) 10 B. H. C. (Cr. C.) 356.

[2] *Sarmukh Singh*, (1879) 2 All. 218, F. B.

ILLUSTRATIONS.

(*a*) A, a coolie, who is a native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(*b*) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(*c*) C, a foreigner, who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(*d*) D, a British subject living in Indore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.

COMMENT.

This section shows the extent to which the Code applies to offences committed outside British India.

Crimes committed outside British India.—Where an offence is committed beyond the limits of British India but the offender is found within its limits, then

(I) he may be given up for trial in the country where the offence was committed (*extradition*), or

(II) he may be tried in British India (*extra-territorial jurisdiction*).

(I) **Extradition.**—The scene of offence committed outside British India may be—

(1) Any of the Native States in which the Governor-General or Governor has a power and jurisdiction through a Political Agent.

(2) Some foreign State.

(3) Some part of the King-Emperor's dominions.

(1) Where an extradition offence (*i. e.*, any such offence as is described in the first schedule to the Indian Extradition Act) has been committed by a person, not being a European British subject, in the territories of such state and such person escapes into or is in British India, and the Political Agent in or for such state issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly[1].

(2) Where the scene of offence is some foreign State (*i. e.*, a State to which for the time being, the Extradition Acts, 1870 and 1873, apply) the fugitive criminal may, if the Government of India or the Local Government think fit and the offence is not of a political character, be surrendered if a requisition is made[2].

But if the foreign State is not of the above description, then there is no Act, or provision in any Act, for the giving up of a foreign subject, found in British India, who has committed a crime in that State.

[1] The Indian Extradition Act, XV of 1903, s. 7 (1).

[2] The Indian Extradition Act, s. 3.

Extradition, as between the British Government and Non-Asiatic States is granted only if there is any treaty. Such are the Portuguese Treaty Act (IV of 1880) and the Treaty with France (1909).

(3) Where a person accused of having committed an offence specified in s. 9 of the Fugitive Offenders' Act, 1881, or s. 19 (*d*) of the Indian Extradition Act (*viz.*, treason or any other offence punishable with rigorous imprisonment) for a term of twelve months or more, (or with any greater punishment), in one part of His Majesty's dominions, has left that part, such person, if found in another part of His Majesty's dominions, shall be liable to be apprehended and returned in manner provided by the Fugitive Offenders' Act to the part from which he is a fugitive.

Extra-territorial Jurisdiction.—British Indian Courts are empowered to try offence committed out of British India either on (A) Land, or (B) High Seas.

(A) **Land**—By virtue of sections 3 and 4 of the Penal Code, and section 188 of the Code of Criminal Procedure, local Courts can take cognizance of offences committed beyond the territories of British India.

Section 188 of the Criminal Procedure Code provides that

(*a*) When a Native Indian subject of His Majesty commits an offence at any place without and beyond the limits of British India, or

(*b*) when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

(c) when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any native Prince or Chief in India, he may be dealt with in respect of such offence as if it had been committed at any place within British In lia at which he may be *found*.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, that charge ought to be inquired into in British India; and where there is no Political Agent, the sanction of the local Government shall be required.

The word 'found' in this section means not where a person is discovered but where he is actually present[1]. A man brought to a place against his will can be said to be found there[2]. When a man is in the country and is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. The special tribunal of the Bombay High Court laid down this principle, following English precedents, in *Savarkar's case.* Savarkar had escaped at Marseilles from the custody of Police Officers, charged with the duty of bringing him from London to Bombay, but was re-arrested there and brought to Bombay and committed for trial by the special Magistrate at Nasik. The High Court held that the trial and committal were valid[3].

[1] *Maganlal*, (1882) 6 Bom. 622.
[2] *Sattler*, (1858) 27 L. J. (M.C.) 48.
[3] *Vinayak D. Savarkar*, (1910) 13 Bom. L. R. 296.

The Governor-General in Council can by order authorize and empower any High Court to exercise all or any portion of the jurisdiction and powers, conferred on it by His Majesty's Letters Patent, in respect of Christian subjects of His Majesty resident within the dominions of Princes and States of India in alliance with His Majesty[1].

Acts done within British as well as foreign territory.—A person who is a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, partly within and partly without the British territories, provided the acts amount together to an offence under the Code[2].

Subsequent annexation or transfer of the territory where the offence is committed.—A person, after having committed dacoity attended with murder, absconded to Bhootan, which was subsequently annexed by the British Government. It was held that he could be tried and convicted for the offence by the British Courts[3]. Similarly, where certain persons were charged with committing an offence at a place in British India and committed to a Court of Session and the place where the offence was committed became part of a Native State subsequently, it was held that the British Courts were not deprived of jurisdiction inasmuch as at the time of the transfer of the place where the offence had been committed the accused were in British India in custody in point of law of a Court of competent jurisdiction[4].

(B) High seas—Admiralty jurisdiction.—The jurisdiction to try offences committed on the high seas is known as admiralty jurisdiction. It is founded on the principle that a ship on the high seas is a floating island belonging to the nation whose flag she is flying.

Admiralty jurisdiction extends over—

(1) Offences committed on British ships on the high seas.

(2) Offences committed on foreign ships in British territorial waters.

(3) Pirates.

Admiralty jurisdiction extends over British ships, not only on the high seas but also in rivers below the bridges, where the tide ebbs and flows, and where great ships go[5]. It extends over British ships although they may be at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction, if invoked. Ever since the time of Richard II. this jurisdiction has extended to where great ships go as part of their voyage for the purposes of trading, and all persons, whether British subjects or foreigners, who happen to be on board such ships, so as to be entitled to the protection of English law[6]. It makes no difference whether the offender comes voluntarily on board the British ship or is brought and detained there against his will; nor whether he comes voluntarily within the jurisdiction of the particular

1 28 & 29 Vic., c. 15, s. 3.

2 *Moulvie Ahmudoollah*, (1865) 2 W. R. 60.

3 *Roopa*, (1865) 2 W. R. 49.

4 *Ram Naresh Singh*, (1911) 34 All. 118; *Ganga*, (1912) 34 All. 451.

5 *Anderson*, (1868) L. R. 1 C. C. R. 161.

6 *Anderson*. ubi. sup.: *Carr and Wilson*, (1882) 10 Q. B. D. 76, 86

Court by which he is tried or is brought within that jurisdiction against his will[1]. If one foreigner inflicts a blow on another foreigner in a foreign vessel on the high seas, and the person so struck in a few days afterwards lands in England and dies there, the homicide is not cognizable by English Courts[2].

The admiralty jurisdiction does not extend to any river, creek, or port within the body of a district. In such cases the ordinary Criminal Courts have jurisdiction.

With regard to the sea-shore, the ordinary Criminal Courts and the Courts of Admiralty have alternate jurisdiction between high and low water mark[3].

Offences committed on the high seas could not be tried, at first, by ordinary Criminal Courts. They were only dealt with by the Admiralty Court. But now by virtue of the Admiralty Offences Act, 1849[4], and the Merchant Shipping Act, 1894 [5], such offences are triable in England as well as in India by ordinary Criminal Courts, as if they were committed within the local jurisdiction of those Courts.

Piracy.—Piracy is of two kinds, *viz.*, piracy *jure gentium* and piracy by the statute law of England. Piracy *jure gentium* is an offence against all nations. "The offence of piracy, by common law," according to Blackstone[6], "consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there." To whatever country the pirate may have originally belonged, he is triable everywhere, his detestable occupation has made him enemy of the mankind and he cannot upon any ground claim immunity from the tribunal of his captor[7].

If the subjects of the same State commit robbery upon each other, upon the high sea it is piracy. If the subjects of different States commit robbery upon each other, upon the high sea, if their respective States be in amity, it is piracy; if at enmity, it is not; for it is a general rule that enemies can never commit piracy on each other, their depredations being deemed mere acts of hostility[8].

By statutes passed at various times, and still in force, many artificial offences have been created, which are to be deemed to amount to piracy[9].

The admiralty jurisdiction extends to pirates who are foreigners in the case of piracy *jure gentium* only.

Jurisdiction of Indian High Courts.—The High Courts of Bombay, Calcutta and Madras have the same admiralty jurisdiction as that of the late Supreme Courts. The jurisdiction of the Supreme Courts was that of the

1 *Christian Sattler*, (1858) Dears. & B. 525.

2 *Lewis*, (1857) 26 L. J. (M. C.) 104.

3 3 Coke 113.

4 12 & 13 Vic., c. 96.

5 57 & 58 Vic., c. 60.

6 Kerr on Blackstone, Vol. 4. p. 58 (4th edn.)

7 Phillimore, Vol. I, p. 488 (3rd edn.)

8 4 Coke 154.

9 Report of Commrs. of Crim. Law.

High Court of Admiralty in England as it stood in 1823. The jurisdiction of the Supreme Court in Vice-Admiralty was created by commission from the High Court of Admiralty in England in 1843. Under Act XVI of 1891, the High Courts of Bengal, Madras, and Bombay are declared to be Colonial Courts of Admiralty within the meaning of Statutes 53 & 54 Vic., c. 27. The effect of these Statutes is to confer upon these High Courts the same jurisdiction as is vested in the Admiralty Courts of England.

The offences which come within the admiralty jurisdiction are now defined by the Merchant Shipping Act, 1894.

Jurisdiction of moffussil Courts.—The jurisdiction to try offences committed on the high seas was conferred on moffussil Courts by 12 & 13 Vic., c. 96, declared applicable to India by section 1 of 23 & 24 Vic., c. 88. Prior to the passing of the latter Statute these Courts had no such jurisdiction. This jurisdiction has also been confirmed by section 686 of the Merchant Shipping Act of 1894 [1].

Presidency Magistrate's Courts.—Any Presidency Magistrate has jurisdiction to try offences committed on the high seas[2].

Law and procedure to be followed.—Under the provisions of 12 & 13 Vic., c. 96, extended to India by 23 & 24 Vic., c. 88, persons charged with crimes on the high seas may be proceeded against in the Courts of British India in the same way as if the offence had been committed upon any waters situate within the limits of British India and within the limits of the local jurisdiction of its Criminal Courts, and on conviction may be punished as if their crimes had been committed in England. Hence it was held[3] that the English law should be the substantive law of decision in cases made cognizable by the local tribunals by virtue of that Statute. But now it is provided by s. 3 of 37 & 38 Vic., c. 27, that a person committing an offence on the high seas shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the offence had been committed within the limits of British India : provided that if the offence is not punishable by the law of British India, the person shall, on conviction, be liable to such punishment (other than capital punishment), as shall seem to the Court most nearly to correspond to the punishment to which such person would have been liable in case such offence had been tried in England. The Statute, therefore, applied local punishment, that is, punishment under the Indian Penal Code, in the first instance. The procedure to be followed in such cases is the ordinary Criminal Procedure[4] and the offence charged must be an offence under the English law[5]. Thus we have the three following conditions necessary—

(1) The offence must be an offence under the English Law.

1 57 & 58 Vic., c. 60.

2 *Chief Officer of the SS. Mushtari*, (1901) 3 Bom. L. R. 253, 25 Bom. 636.

3 *Elmstone*, (1870) 7 B. H. C. (Cr.C.) 89; *Thompson*, (1867) 1 B. L. R. O. Cr. J. 1.

4 *Elmstone*, supra ; *Thompson*, supra ; *Barton*, (1889) 16 Cal. 238 ; *Gunning*, (1894) 21 Cal. 782.

5 *Thompson* and *Gunning*, supra.

(2) The trial must be conducted under the Code of Criminal Procedure.

(3) The punishment must be regulated by the Penal Code.

Liability of foreigners in British India for offences committed outside its limits.—There is no express enactment by which the Indian Legislature can assume to render foreigners subject to the criminal law of British India with reference to acts committed by them beyond the limits of British India. In the words of Lord Chief Justice Cockburn "no proposition of law can be more incontestible or more universally admitted than that, according to the general law of nations, a foreigner cannot be held criminally responsible to the law of a nation not his own for acts done beyond the limits of its territory[1]." The acts of a foreigner committed by him in territory beyond the limits of British India do not, therefore, constitute an offence against the Penal Code of British India, and, consequently, a foreigner cannot be held criminally responsible under that Code by the tribunals of that country for acts committed by him beyond its territorial limits. It is only for acts done when the person doing them is within the territory over which the authority of British law extends, that the subject of a foreign State owes obedience to that law and can be made amenable to its jurisdiction. Thus, when it is sought to punish a person, who is not a British subject, as an offender in respect of a certain act, the question is not 'where was the act committed,' but, 'was the person at the time, when the act was done, within the territory of British India.' For, if he was not, the act is not an offence, the doer of it is not liable to be punished as an offender, and he is, therefore, not subject to the jurisdiction of criminal Courts[2].

A foreign subject, resident in a foreign territory, instigating the commission of an offence which, in consequence, is committed in British territory is not amenable to the jurisdiction of a British Court if the instigation has not taken place in British India[3].

But if a foreigner in foreign territory initiates an offence which is completed within British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence was completed[4].

CASES.

Admiralty jurisdiction.—*English cases.*—The accused, an English sailor, stole three chests of tea out of a British vessel, when it was lying in a river in China. It was urged that as the vessel was twenty or thirty miles from the sea, the offence was not committed on the high seas. It was held that the offence was committed within the admiralty jurisdiction[5]. An American, serving on board a British ship, caused the death of another

[1] *Franconia case* or *Keyn*, (1876) 2 Ex. D. 63.

[2] Per Plowden, J., in *Mussummat Kishen Kour*, (1878) P. R. No. 20 of 1878; *Jameson*, [1896] 2 Q. B. 425.

[3] *Pirtai*, (1873) 10 B. H. C. (Cr. C.) 356; *Raj Bahadur* v. *Crown*, (1918) P. R. No. 23 of 1918.

[4] *Chhotalal Babar*, (1912) 14 Bom. L. R. 147, 1 Bom. Cr. C. 88.

[5] *Thomas Allen*, (1837) 1 Moody C. C. 494.

American serving on the same ship, under circumstances amounting to manslaughter, the ship at the time, being in the river Garonne, within French territory, at a place below bridges where the tide ebbed and flowed and great ships went. It was held that the ship was within the admiralty jurisdiction, and that the prisoner was rightly tried and convicted at the Central Criminal Court[1]. A foreigner, having committed larceny in England, was followed to Hamburg by an English police officer, who arrested him without a warrant, and brought him against his will on board an English steamer trading between Hamburg and London, and there kept him in custody in order that he might be tried for the larceny in England. During the voyage, whilst the steamer was on the high seas, he shot the officer out of malice prepense and not with a view to escape. It was held that he was guilty of murder within the admiralty jurisdiction[2]. Certain bonds were stolen from a British ship, whilst she was lying afloat in the river at Rotterdam, moored to the quay, and were afterwards wrongfully received in England by the prisoners with a knowledge that they had been stolen. The place where the ship lay at the time of the theft was in the open river sixteen or eighteen miles from the sea, but within the ebb and flow of the tide, and where large vessels usually lay. It did not appear who the thief was, or under what circumstances he was on board the ship. It was held that the larceny took place within the admiralty jurisdiction[3].

Where the accused and the deceased were foreigners, and the latter died at Liverpool from injuries inflicted by the accused on board a foreign ship on the high seas[4] it was held that the English Courts had no jurisdiction to try the accused.

Liability of foreigners in British India for offences committed outside its limits.—Where the accused had committed dacoity, in the Patiala State but found in British territory where they had stayed for three years, it was held that they were not liable to be tried by the British Court as they were foreign subjects, and the offence had been committed in foreign territory[5]. A girl was enticed away in the Faridkote State from the lawful guardianship of her husband by the accused, who were foreign subjects, and was found being conveyed by them by rail from that State to a station in the Bhawalpur State at the railway station of Abdhar in the British territory, it was held that as the act of kidnapping was complete outside British India, the British Courts had no jurisdiction to try and convict the accused[6]. The accused, a subject of the Native State of Junaghad, was charged with the offence of attempt to murder, on board a ship belonging to him on the high seas some eighteen miles off the coast

[1] *Anderson*, (1868) L. R. 1 C. C. R. 161.

[2] *Christian Sattler*, (1858) Dears. & B. 525.

[3] *Carr and Wilson*, (1882) 10 Q. B. D. 76.

[4] *John Lewis*, (1857) Dears. & B. 182.

[5] *Nawabji*, (1881) P. R. No. 37 of 1881; *Ibrahim*, (1894) P. R. No. 7 of 1893.

[6] *Jaimal Singh*, (1901) P R. No. 1 of 1901.

of the Kanara District. It was held that the Magistrate of that district had no jurisdiction to try the accused[1].

Abetment.—A subject of a Native State, who by acts done in that State, and not in British territorry, abets the commission of an offence in British territory, is not liable to be punished under the Penal Code by the Courts of British India[2], even if he afterwards be in British India[3].

Certain laws not to be affected by this Act.

5. Nothing in this Act is intended to repeal, vary, suspend or affect any of the provisions of the Statute 3 & 4 William IV, Chapter 85[1], or of any Act of Parliament passed after that Statute in anywise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers and soldiers, in the service of Her Majesty...., or of any special or local law[2].

COMMENT.

This section acts as a saving clause to section 2. Though the Code was intended to be a general one, it was not thought desirable to make it exhaustive, and hence offences defined by local and special laws were left out of the Code, and merely declared to be punishable as theretofore[6].

1. 'Statute 3 & 4 Will. IV. c. 85'—This statute is known as "the Government of India Act, 1833." Section 51 of this statute says that the Sovereign legislative power for British India is, as for all parts of His Majesty's dominions, the Sovereign and Parliament, who in delegating a power of legislation to the Governor-General-in-Council has expressly reserved the right to continue to legislate for the territories and inhabitants of British India.

2. 'Special or local law.'—Although an offence is expressly made punishable by a special or local law yet it will be punishable under the Penal Code, if the facts come within the definitions of the Code[7]. No such prosecution is admissible, if it appears upon the whole frame of the special Act that it was intended to be *complete in itself*, and to be enforced only by the penalties created by it[8]; but in the absence of anything in the special Act to exclude the operation of the Code, an intention on the part of the Legislature to exclude it should not be inferred[9]. However, a person cannot be punished under both the Penal Code and a special law for the same offence[10], and ordinarily the sentence should be under the special Act[11].

1 *Punja Gani*, (1917) 20 Bom. L.R. 98.

2 *Pirtai*, (1873) 10 B.H. C. (Cr.C.) 356.

3 *Mussummat Kishen Kour*, (1878) P. R. No. 20 of 1878.

4 *Christian Sattlar*, (1858) Dears. & B. 525.

5 *Carr and Wilson*, (1882) 10 Q. B. D. 76.

6 (1866) 3 M. H. C. App. 11, 16.

7 *Ramchandrappa*, (1883) 6 Mad. 249.

8 *Chandi Pershad* v. *Abdur Rahman*, (1894) 22 Cal. 131, 139.

9 *Imam Bakhsh*, (1885) P. R. No. 10 of 1885.

10 *Hussun Ali*, (1873) 5 N. W. P. 49.

11 *Kuloda Prosad Majumdar*, (1906) 11 C. W. N. 100.

CHAPTER II.

GENERAL EXPLANATIONS.

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained, and the meanings thus announced are steadily adhered to throughout the subsequent chapters.

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition of penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision or illustration.

ILLUSTRATIONS.

(*a*) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b*) A, a Police Officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Sense of expression once explained.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man." "Woman."

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Person."

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

12. The word "public" includes any class of the public or any community.

"Public".

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland

"Queen."

14. The words "servant of the Queen" denote all officers or servants continued, appointed or employed in India by or under the authority of the said Statute 21 & 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," or by or under the authority of the Government of India or any Government.

"Servant of the Queen."

15. The words "British India' denote the territories which are or may become vested in Her Majesty by the said Statute 21 & 22 Victoria, Chapter 106, entitled "An Act for the better Government of India...."

"British India."

16. The words "Government of India" denote the Governor General of India in Council, or during the absence of the Governor General of India from his Council, the President in Council or the Governor General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

"Government of India."

17. The word "Government" denotes the person or persons authorized by law to administer executive Government in any part of British India.

"Government."

18. The word "Presidency" denotes the territories subject to the Government of a Presidency.

"Presidency."

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person

"Judge."

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judg-

ment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

ILLUSTRATIONS.

(*a*) A Collector exercising jurisdiction in a suit under Act X of 1859 is a Judge.

(*b*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c*) A member of a panchayat which has power, under Reg. VII, 1816 of the Madras Code, to try and determine suits, is a Judge.

(*d*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge

COMMENT

Illustration (*b*) is very important as it indicates that a Magistrate who has power only to commit a case for trial to another Court, is not a 'Judge'

"Court of Justice"

20 The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

ILLUSTRATION

A panchayat acting under Reg VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice

"Public servant"

21 The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely —

First —Every Covenanted servant of the Queen,

Second.—Every Commissioned Officer in the Military or Naval forces of the Queen while serving under the Government of India or any Government,

Third —Every Judge,

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to

interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor or member of a panchayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience:

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process or to investigate, or to report, on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty:

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.

ILLUSTRATION.

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above

descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

COMMENT.

A line is drawn between the great mass of the community and certain classes of persons in the service and pay of Government, or exercising various public functions, who are here included in the words "public servant." Those offences which are common between public servants and other members of the community are left to the general provisions of the Code. But there are several offences which can only be committed by public servants, and, on the other hand, public servants in the discharge of their duties have many privileges peculiar to themselves[1].

Various functionaries have by later Acts been declared to be public servants for the purposes of the Penal Code.

Explanation 2.—The person who in fact discharges the duties of the office which bring him under some one of the descriptions of public servant, is for all the purposes of the Code rightfully a public servant, whatever legal defect there may be in his right to hold the office[2].

"Moveable property."

22. The words "moveable property" are intended to include corporeal[1] property of every description, except land and things attached to the earth or permanently fastened to any thing which is attached to the earth[2].

COMMENT.

This definition is restricted to corporeal property, it excludes all choses in action.

1. **'Corporeal property'** is property which may be perceived by the senses, in contradistinction to incorporeal rights, which are not so perceivable, as obligations of all kind. Thus, salt produced on a swamp[3], and papers forming part of the record of a case[4] are property within the meaning of this section.

'Land and things attached to the earth.' This section does not exempt "earth and things attached to the earth" but "land and things attached to the earth"; "land" and "earth" are not synonymous terms, and

[1] M. & M. 20.

[2] *Ramkrishna Das*, (1871) 7 B. L. R. 446, 448, 16 W. R. 27.

[3] *Tamma Ghantaya*, (1881) 4 Mad. 228.

[4] *Ramaswami Aiyar* v. *Vaithilinga Mudali*, (1882) 1 Weir 28.

there is great distinction between "the earth" and "earth." By severance things that are immoveable become moveable, and it is perfectly correct to call those things attached which can be severed; and undoubtedly it is possible to sever earth from the earth, and attach it again thereto. Earth, that is soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft[1]. Any part of "the earth," whether it be stones or sand or clay or any other component, when severed from "the earth," is moveable property[2].

"Wrongful gain."

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully; losing wrongfully.

A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property[1], as well as when such person is wrongfully deprived of property.

COMMENT.

The word 'wrongful' means prejudicially affecting a party in some legal right. For either wrongful loss or gain, the property must be lost to the owner, or the owner must be wrongfully kept out of it. Thus, where a pledgee used a turban that was pledged, it was held that the deterioration of the turban by use was not 'wrongful loss' of property to the owner, and the wrongful beneficial use of it by the pledgee was not a 'wrongful gain' to him[3]. Forcible and illegal seizure of bullocks of a widow in satisfaction of a debt due to the accused by her deceased husband was held to be a 'wrongful loss'[4]. Where a person, who purchased rice from a famine relief officer, at a certain rate on condition that he should sell it at a pound the rupee less, did not sell it at the rate agreed upon, but at four pounds the rupee less, it was held that no wrongful gain or wrongful loss had been caused to any one within the meaning of this section. The rice having been sold to the accused, and he having paid for it, it was not unlawful for him to sell it again at such prices as he thought fit[5].

[1] *Shivram*, (1891) 15 Bom. 702.

[2] *Suri Venkatappayya Sastri* v. *Madula Venkana*, (1904) 27 Mad. 531, 535, F. B.; overruling *Kotayya*, (1887) 10 Mad. 255.

[3] (1866) 3 M. H. C. App. 6.

[4] *Preonath Banerjee*, (1866) 5 W. R. 68.

[5] *Lal Mahomed*, (1874) 22 W. R. 82.

1. 'Wrongfully kept out of any property.'—When the owner is kept out of possession of his property with the object of depriving him of the benefit arising from the possession even temporarily, the case will come within the definition. If a creditor by force or otherwise takes the goods of his debtor out of his possession against his will in order to put pressure on him to compel him to discharge his debt he will be guilty of theft by causing wrongful loss to the debtor[1]. But where the owner is kept out of possession temporarily not with any such intention, but only with the object of causing him trouble in the sense of more mental anxiety, and with the ultimate intention of restoring the thing to him without exacting or expecting any recompense, the detention does not amount to causing wrongful loss in any sense[2]. Thus, where the accused had removed a box of his master and left it concealed in a cow-shed to give a lesson to his master, it was held that such a removing did not amount to wrongful loss[3].

Fees payable to a college for attending lectures are held to be 'property' within the meaning of this section[4].

"Dishonestly."

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly."

COMMENT.

From this definition it will appear that the term 'dishonestly' is not used in the Code in its popular significance. Unless there is wrongful gain to one person, or wrongful loss to another, an act would not be 'dishonest'.

"Fraudulently."

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud[1], but not otherwise.

COMMENT.

The word 'fraudulently' is not confined to transaction of which deprivation of property forms a part[5]. The intention with which an act is done is very important in determining whether the act is done 'dishonestly' or 'fraudulently'.

1. 'Intent to defraud.'—The terms 'fraud' and 'defraud' are not defined in the Penal Code. The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation, and, as it is not defined, its meaning must be sought by a consideration of the context in which the word 'fraudulently' is found[6]. Sir James Stephen[7] observes: "Whenever the words 'fraud' or 'intent to defraud' or 'fraudulently' occur in the defini-

[1] *Sri Churn Chungo*, (1895) 22 Cal. 1017, F. B.

[2] *Nabi Baksh*, (1897) 25 Cal. 416.

[3] *Ibid.*

[4] *Soshi Bhushan*, (1893) 15 All. 210, 216.

[5] *Abbas Ali*, (1897) 25 Cal. 512, F. B.

[6] *Abbas Ali*, (1897) 25 Cal. 512, F. B.

[7] History of Criminal Law of England, Vol. II, p. 121.

tion of a crime two elements at least are essential to the commission of the crime: namely, first, deceit or an intention to deceive or in some cases mere secrecy; and, secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury, by means of that deceit or secrecy. This intent, I may add, is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. The injurious deception is usually intended only as a means to an end, though this, as I have already explained, does not prevent it from being intentional....A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this: Did the author of the deceit derive any advantage from it which he could not have had if the truth had been known? If so, it is hardly possible that that advantage should not have had an equivalent in loss, or risk of loss, to some one else; and if so, there was fraud. In practice people hardly ever intentionally deceive each other in matters of business for a purpose which is not fraudulent."

Defraud involves two conceptions, namely, deceit and injury (i. e., infringement of some legal right) to the person deceived[1]. Where there is an intention to deceive and by means of deceit to obtain an advantage there is fraud[2]. The intention to deceive may be from any expectation of advantage to the party himself, or from ill-will towards the other[3].

A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, is sufficient to support a conviction[4]. In order to prove an intent to defraud, it is not at all necessary that there should have been some person defrauded, or who might possibly have been defrauded. A man may have an intent to defraud, and yet there may not be any person who could be defrauded by his act. Suppose a person with a good account at his bankers, and a friend, with his knowledge, forges his name to a cheque either to try his credit, or to imitate his handwriting, there would be no *intent* to defraud, though there would be parties who might be defrauded; but where another person has no account at his bankers, but a man *supposes* that he has, and on that supposition forges his name, there would be an intent to defraud in that case, although no person could be defrauded[5].

'Fraudulently'; 'dishonestly.'—There is a real distinction between the meaning of the terms 'fraudulently' and 'dishonestly'; the former denotes an intent to deceive. The production of a forged bond by a person in a suit with the intent to make the Court believe that he was entitled to recover money upon the basis of the particular document produced, though it may

1 *Surendra Nath Ghosh*, (1910) 14 C. W. N. 1076.

2 *Muhammad Saeed Khan*, (1898) 21 All. 113, 115.

3 *Vithal Narayen*, (1886) 13 Bom. 515 n.; *Haycraft* v. *Creasy*, (1801) 2 East 92, 108.

4 *Dhunum Kazee*, (1882) 9 Cal. 53, 60.

5 Per Maule, J., in *Charles Nash*, (1852) 2 Den. C. C. 493, 499.

not be dishonest within the meaning of s. 24, may yet be fraudulent within the meaning of s. 471[1].

CASES.

'Intent to defraud.'—The accused in order to obtain recognition from a Settlement Officer that they were entitled to the title of "Loskur" filed a *sunnad* before that officer purporting to grant that title. This document was found not to be genuine and they were convicted under ss. 471 and 464. It was held that they could not be found guilty as their intention was not to cause wrongful gain or wrongful loss to any one, but to produce a false belief in the mind of the Settlement Officer that they were entitled to the dignity of "Loskur" and that this could not be said to constitute an intention to 'defraud'[2].

Where the accused, after the execution and registration of a document, which was not required by law to be attested, added his name to the document as an attesting witness, it was held that his act was neither fraudulent nor dishonest and the accused was, therefore, not guilty of forgery[3].

"Reason to believe."

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

"Property in possession of wife, clerk or servant."

27. When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

COMMENT.

This section abrogates the distinction made by English law between 'possession' and 'custody'[4].

Corporeal property is in a person's possession when he has such power over it that he can exclude others from it, and intends to exercise, if necessary, that power on behalf of himself or of some person for whom he is trustee. But a wife, a clerk or a servant, has not this power or intention to deal with things in their charge as owners. They are, therefore, said to have *custody* merely according to the English law. The word 'custody' means "such a relation towards a thing as would constitute possession if the person having custody had it on his own account."

A man's goods are in his possession not only while they are in his house or on his premises, but also when they are in a place where he may usually

[1] *Kedar Nath Chatterjee*, (1901) 5 C. W. N. 897.

[2] *Jan Mahomed*, (1884) 10 Cal. 584.

[3] *Surendra Nath Ghosh*, (1910) 14 C. W. N. 1076.

[4] *Fateh Chand*, (1916) 44 Cal. 477, F. B.

send them (as when horses and cattle feed on common land), or in a place where they may be lawfully deposited by him, as if he buries money or ornaments in his own land, or puts them in any other secret place of deposit.

"Counterfeit."

28. A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, ntil the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

COMMENT.

The word 'counterfeit' occurs in offences relating to coin provided in Chapter XII.

The 'thing' counterfeited may be a coin or a piece of metal. Its value is immaterial. The counterfeited coin may be more valuable so far as money value is considered than the coin for which it is intended to pass

"Document."

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

ILLUSTRATIONS.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

ILLUSTRATION.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

COMMENT.

A writing which is not legal evidence of the matter expressed, may yet be a document if the parties framing it *believed* it to be, and *intended* it to be, evidence of such matter[1]. An agreement in writing, which purported to be entered into between five persons, was signed by only two of them. It was held that it was a 'document' within the meaning of this section though it was not signed by all the parties thereto[2].

An avouchment, whether written or printed, of the character or quality of a chattel, is not a document which, if false, would be a forgery, *e. g.*, the enclosing of spurious goods in a wrapper imitating a trade-mark[3].

"Valuable security."

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

ILLUSTRATION.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

COMMENT.

The words "valuable security" denote a particular class of documents, *viz.*, such documents as create or extinguish legal rights.

"A will."

31. The words "a will" denote any testamentary document.

COMMENT.

'Will' is the legal declaration of the intentions of the testator with re-

[1] *Sheefait Ally*, (1868) 10 W. R. 61; 2 B. L. R. 12.

[2] *Ramaswami Ayyar*, (1917) 41 Mad. 589.

[3] *Smith's case*, (1858) Dearsley & B. 566.

spect to his property, which he desires to be carried into effect after his death[1].

Words referring to acts include illegal omissions.

32. In every part of this Code except where a contrary intention appears from the context, words which refer to acts[1] done extend also to illegal omissions[2].

COMMENT.

This section puts an illegal omission on the same footing as a positive act.

1. **'Act.'**—An 'act' generally means something voluntarily done by a person. 'Act' is a determination of the will, producing an effect in the sensible world. This word includes writing and speaking, or, in short, any external manifestation. In the Code it is not confined to its ordinary meaning of positive conduct of doing something, but includes also illegal omissions.

2. **'Omission.'**—This word is used in the sense of intentional non-doing. Thus, according to this section, 'act' includes intentional doing as well as intentional non-doing. The omission or neglect must, no doubt, be such as to have an active effect conducing to the result, as a link in the chain of facts from which an intention to bring about the result may be inferred[2]. The Code makes punishable omissions which have caused, which have been intended to cause, or which have been known to be likely to cause a certain evil effect in the same manner as it punishes acts, provided they were illegal. And when the law imposes a duty to act on a person, his illegal omission to act renders him liable to punishment[3].

"Act." "Omission."

33. The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

COMMENT.

The effect of s. 32 and this section taken together is that the term 'act' comprises one or more acts or one or more illegal omissions.

Acts done by several persons in furtherance of common intention.

34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

COMMENT.

Object.—This section is intended to meet cases in which it may be difficult to distinguish between the acts of the individual members of a party or to prove exactly what part was taken by each of them in furtherance of

1 The Indian Succession Act (X of 1865), s. 3.

2 Per Muthusami Aiyar and Brandt, JJ., in *Thornotti Madathil Poker*, (1886) 1 Weir 495.

3 *Latifkhan*, (1895) 20 Bom. 394.

the common intention of all. The reason why all are deemed guilty in such cases is, that the presence of accomplices gives encouragement, support, and protection to the person actually committing an act.

Scope.—This section applies only where a criminal act is done by several persons of whom the accused charged thereunder is one, and not where the act is done by some person other than the latter. Where, therefore, two persons fire at another and one only actually hits and kills him, the other is not guilty of murder, but of attempt to murder, which offences do not constitute the same act[1].

This section provides not only for liability to punishment, but also for subjection to another jurisdiction. If a foreigner in foreign territory initiates an offence which is completed within British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence was completed[2].

Principle.—It is a well recognised canon of criminal jurisprudence that the Courts cannot distinguish between co-conspirators, nor can they inquire, even if it were possible, as to the part taken by each in the crime[3]. Where parties go with a common purpose to execute a common object, each and every one becomes responsible for the acts of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility[4]. All are guilty of the principal offence, not of abetment. But a party not cognizant of the intention of his companion to commit murder is not liable, though in his company, to do an unlawful act[5].

If the criminal act was a fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different criminal act. Thus a person not cognizant of the intention of his companion to commit a murder, is not liable, though in his company, to do an unlawful act.

CASES.

Where each of several persons took part in beating a person so as to break eighteen ribs and cause his death, each of them was convicted of muder[6]. But where three persons assaulted the deceased and gave him a beating in the course of which one struck him a blow on the head, which resulted in death, it was held that, in the absence of proof that the prisoners had the *common intention* to inflict injury likely to cause death, they could not be convicted of murder[7].

English case.—Lord Dacre agreed with several persons to hunt in another's park for deer, and to kill all who might resist. One of the party having

[1] *Nirmal Kanta Roy*, (1914) 41 Cal. 1072; *Mahabir Tiwari*, (1899) 21 All. 263, dissented from.

[2] *Chhotalal Babar*, (1912) 14 Bom. L. R. 147; 1 Bom. Cr. C. 88.

[3] *Ibid.*

[4] *Ganesh Singh* v. *Ram Raja*, (1869) 3 B. L. R. (P. C.) 44, 45.

[5] *Duffey's case*, (1830) 1 Lewin 194.

[6] *Gour Chunder Das*, (1875) 24 W. R. 5.

[7] *Duma Baidya*, (1896) 19 Mad. 483.

killed the keeper, all were held guilty of the murder, though Lord Dacre was a quarter of a mile distant, and knew nothing of the individual blow[1].

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

COMMENT.

The preceding section provided for a case in which a criminal act was done by several persons in furtherance of the common intention of all. Under this section a person assisting the accused, who actually performs the act, must be shown to have the *particular* intent or knowledge, if the act is criminal only by reason of its being done with a criminal knowledge or intention.

If several persons, having one and the same criminal intention or knowledge, jointly commit murder or an assault, each is liable for the offence as if he has acted alone; but if several persons join in an act, each having a different intention or knowledge from the others, each is liable according to his own criminal intention or knowledge, and he is not liable further.

If an act which is an offence in itself and without reference to any criminal knowledge or intention on the part of the doers is done by several persons, each of such persons is liable for the offence.

Effect caused partly by act and partly by omission.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

ILLUSTRATION.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

COMMENT.

This section follows as a corollary from s. 32. The legal consequences of an 'act' and of an 'omission' being the same, if an offence is committed partly by an act and partly by an omission the consequences will be the same as if the offence was committed by an 'act' or by an 'omission' alone.

1 *Dacre's case*, 1 Hale P.C. 439.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

ILLUSTRATIONS.

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

COMMENT.

This section follows as a corollary from s. 35 as appears from the illustrations.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Persons concerned in criminal act may be guilty of different offences.

ILLUSTRATION.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

COMMENT.

Sections 34, 35 and 38 deal with the same subject and should be read together. Section 34 treats of acts done with a 'common intention'; this section, of acts done with different intentions. Thus it is the converse of s. 34. Under this section the act is not supposed to be done with a 'common intention.'

This section indicates that persons engaged in the commission of one act may be guilty of different offences owing to the difference in their intentions. The illustration clearly exemplifies this principle. A quarrel arose between C on the one side and A and B on the other. C abused A, whereupon A struck him with a stick, and B struck him down with an axe on the head. He also received two other wounds with the axe on other parts of the body. Any one of three axe-wounds was sufficient to cause death, more especially that on the head. It was held that B was guilty of culpable homicide, while A was guilty of voluntarily causing hurt[1].

Sections 34 to 38 lay down principles similar to the English law of "Principals in the first and second degree." See Comment on s. 107.

"Voluntarily."

39. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

ILLUSTRATION.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

COMMENT.

The word 'voluntarily' is defined in relation to the causation of effects and not to the doing of acts from which those effects result. It has been given a peculiar meaning, differing widely from its ordinary meaning in the Code.

In general, the Code makes no distinction between cases in which a man causes an effect *designedly* and cases in which he causes it *knowingly* or *having reason to believe* that he is likely to cause it. If the effect is a probable consequence of the means used by him he causes it '*voluntarily*' whether he really meant to cause it or not. He is not allowed to urge that he did not know or was not sure that the consequence would follow; but he must answer for it just as if he had intended to cause it[2].

"Offence."

40. Except in the chapter and sections mentioned in clauses two and three of this section the word "offence" denotes a thing made punishable by this Code.

[1] *Indar*, (1882) 2 A. W. N. 23. [2] M. & M. 21.

In chapter IV, chapter V A and in the following sections, namely, sections 64, 65, 66, 67, 71, 109 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211 213, 214, 221, 222, 223, 224, 325, 227, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

"Special law."

41. A "special law" is a law applicable to a particular subject.

COMMENT.

Laws dealing with special subjects are called special laws, *e. g.*, the Income Tax Act, the Land Acquisition Act.

"Local law."

42. A "local law" is a law applicable only to a particular part of British India.

COMMENT.

Laws applicable to particular localities only are termed local laws, *e. g.*, Port Trust Acts.

"Illegal." "Legally bound to do."

43. The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

COMMENT.

A very wide meaning is given to the word 'illegal'. It is applicable to (1) every thing which is an offence, (2) every thing which is prohibited by law, and (3) every thing which furnishes a ground for a civil action. The prohibition in the second case must be *legal*. The accused submitted to his official superior a false 'nil' return of lands in his employment, and also made a false statement to the same effect in a revenue inquiry. It was held that no offence had been committed as the act of the accused was not 'illegal'[1]. He was doubtless guilty of a breach of a departmental order, but he was not

[1] *Appayya*, (1891) 14 Mad. 484.

legally bound to furnish such information within the meaning of this section. Suppose an official is bound by the rules of his superior to be at his office at 10 A. M. and to enter his name in a book kept for that purpose; he falsely enters his arrival at 10 when he in fact arrived at 11 o'clock; can it be said that he has committed an offence? Certainly not. A breach of a departmental order is not a criminal offence.

44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

"Injury."

COMMENT.

'Injury' is an act contrary to law[1]. It will include any tortious act.

The word 'property' means something in existence and it cannot be applied to the reasonable expectation of pecuniary benefit for the loss of which an action is maintainable by the representative of a deceased person[2]. A Magistrate imposed a fine in addition to a sentence of imprisonment on a conviction for the offence of causing death by rash and negligent act and gave compensation to the widow of the deceased out of the fine imposed. It was held that compensation could not be given to her for she did not suffer any injury as here defined[3].

45. The word "life" denotes the life of a human being, unless the contrary appears from the context

"Life"

46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Death,"

47. The word "animal" denotes any living creature, other than a human being.

"Animal"

48. The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

"Vessel"

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.

"Year." "Month."

COMMENT.

A person sentenced to imprisonment for the space of one calender month is entitled to be discharged on the day in the succeeding month

[1] *Swami Nayudu* v. *Subramania Mudali*, (1864) 2 M. H. C. 158.

[2] *Yalla Gangulu* v. *Mamidi Dali*, (1897) 21 Mad. 74, 76, F. B.

[3] *Ibid.*

immediately preceding the day corresponding to that from which his sentence takes effect[1]. The day on which a sentence is passed on a prisoner is calculated as a whole day.

50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

"Section"

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

"Oath."

COMMENT.

An oath is a religious asseveration by which a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth[2]. The form of oath differs according to the religious persuasion of the swearer. A Christian swears on the Bible, a Jew upon the Pentateuch, a Mahomedan upon the Koran, and a Hindu on the Gita. A Hindu or Mahomedan has the statutory right to be affirmed instead of taking an oath.

52. Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

"Good faith."

COMMENT.

The definition of good faith given here is merely a negative one. It does not define "good faith." It says that an act is only done in good faith if it is done with due care and attention. In the General Clauses Act this expression is thus defined: "A thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not."

The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. The law does not exact the same care and attention from all persons regardless of the position they occupy[3].

CASES.

Arrest without proper inquiry.—A police officer, seeing a horse resembling one which his father had lost a short time previously, tied up in B's premises, jumped at once to the conclusion that B had either stolen the horse, or had purchased it from the thief. He found that B had bought the animal from one S; so he sent for S and charged him with

1 *Migotti* v. *Colvill*, (1879) 4 C. P. D. 233.

2 *White*, (1786) 1 Leach 430, 431.

3 *Bhawoo Jivaji* v. *Mulji Dayal*, (1888) 12 Bom. 377, 393.

the theft without taking the trouble of getting any credible information as to whether it was his father's horse or not. It was held that he had acted without exercising due care and attention[1].

Operation by an unskilful person.—Where a person, uneducated in matters of surgery, operated on a man for internal piles by cutting them out with an ordinary knife, and the man died from hæmorrhage, it was held that he had not acted in good faith although he had performed similar operations on previous occasions[2].

CHAPTER III.

OF PUNISHMENTS.

"Punishment."

53. The punishments to which offenders are liable under the provisions of this Code are,—

First,—Death;

Secondly,—Transportation;

Thirdly,—Penal servitude;

Fourthly,—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour.

(2) Simple.

Fifthly,—Forfeiture of property;

Sixthly,—Fine.

COMMENT.

The principal object of punishment is the prevention of offences, and the measure of punishment must, consequently, vary from time to time according to the prevalence of a particular form of crime and other circumstances. An amount of severity may be very appropriate at one time which would be quite uncalled for at another.

To the six kinds of punishments in the section, two more are added by subsequent enactments, *viz.*, whipping and detention in reformatories. In the Madras Presidency the punishment of stocks is inflicted on offenders of lower castes[3].

1. Death.—Death is the punishment that must be awarded for murder by a person under sentence of transportation (s. 303). It may be awarded as punishment for the following offences:—

(1) Waging war against the Queen (s. 121).

(2) Abetting mutiny actually committed (s. 132).

(3) Giving or fabricating false evidence upon which an innocent person suffers death (s. 194).

[1] *Sheo Surun Sahai* v. *Mohomed Fazil Khan*, (1868) 10 W. R. 20.

[2] *Sukaroo Kobiraj*, (1887) 14 Cal. 566.

[3] Mad. Reg. XI of 1816, s. 10.

(4) **Murder (s. 302).**

(5) **Abetment of suicide of a minor, or an insane or an intoxicated person (s. 305).**

(6) **Dacoity accompanied with murder (s. 396).**

(7) **Attempt to murder by a person under sentence of transportation, if hurt is caused (s. 397).**

2. Transportation.—Transportation for life must be inflicted—

(1) For unlawful return from transportation (s. 226).

(2) For being a thug (s. 311).

3. Penal Servitude.—The punishment of penal servitude, which is a substitute for transportation, is applicable only to Europeans and Americans under Act XXIV of 1855. By reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishment for that of transportation.

Penal servitude is a punishment which consists in keeping an offender in confinement and compelling him to labour. Persons sentenced to penal servitude are, during the term of the sentence, confined in such prison within British India as the Government of India directs, and put to hard labour[1].

4. Imprisonment.—Imprisonment is of two kinds: (*a*) rigorous, and (*b*) simple. In the case of rigorous imprisonment the offender is put to hard labour such as grinding corn, digging earth, drawing water, cutting fire-wood, bowing wool, etc. In the case of simple imprisonment the offender is confined to jail and is not put to any kind of work.

The maximum imprisonment that can be awarded for an offence is fourteen years (s. 55). The lowest term actually named for a given offence is twenty-four hours (s. 510), but the mininum is unlimited.

The minimum term of imprisonment, however, is fixed in the following two cases:

(1) If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, he shall be punished with imprisonment of not less than seven years (s. 397).

(2) If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, he shall be punished with imprisonment of not less than seven years (s. 398).

An offender shall be punished with rigorous imprisonment in the cases of—

(1) Giving or fabricating false evidence with intent to procure conviction of an offence which is capital by this Code, or by the law of England (s. 194).

(2) Unlawful return from transportation (s. 226).

(3) House-trespass in order to the commission of an offence punishable with death (s. 449).

The following offences are punishable with simple imprisonment only:—

(1) Public servant unlawfully engaging in trade; or unlawfully buying or bidding for property (ss. 168, 169).

[1] The Prisoners Act (V of 1871), s. 21.

(2) A person absconding to avoid service of summons or other proceedings from a public servant or preventing service of summons or other proceedings, or preventing publication thereof; or not attending in obedience to an order from a public servant (ss. 172, 173, 174).

(3) Intentional omission to produce a document to a public servant by a person legally bound to produce such documents; or intentional omission to give notice or information to a public servant by a person legally bound to give; or intentional omission to assist a public servant when bound by law to give assistance (ss. 175, 176, 187).

(4) Refusing oath when duly required to take oath by a public servant; or refusing to answer a public servant authorized to question; or refusing to sign any statement made by a person himself before a public servant (ss 178, 179, 180).

(5) Disobedience to an order duly promulgated by a public servant (s. 188).

(6) Escape from confinement neghgently sufferd by a public servant; or negligent omission to apprehend, or negligent sufferance of escape, on the part of a public servant in cases not otherwise provided for (ss. 223, 225A).

(7) Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding (s. 228).

(8) Continuance of nuisance after injunction to discontinue (s. 291).

(9) Wrongful restraint (s. 341).

(10) Defamation; printing or selling defamatory matter known to be so (ss. 500, 501, 502).

(11) Uttering any word, or making any sound or gesture, with an intention to insult the modesty of a woman (s. 509).

(12) Misconduct in a public place by a drunken person (s. 510).

5. Forfeiture.—The forfeiture of property is a punishment mainly inflicted on persons guilty of high political offences. The territorial possessions of such persons often enable them to disturb the public peace, and to make head against the Government; they are, therefore, deprived of so dangerous a power.

Forfeiture is of three different kinds :—

I. Absolute forfeiture of all property of the offender. This takes place in the following cases:—

(1) The offence of waging, or attempting to wage war, or abetting the waging of war against the Queen (s. 121).

(2) The offence of collecting men, arms, or ammunition for, or otherwise preparing to wage such war (s. 122).

(3) Any person convicted of an offence punishable with death (s. 62).

Under ss. 121 and 122 the accused shall forfeit all his property, under s. 62 the Court may adjudge forfeiture.

II. Forfeiture of rents and profits during the term of transportation or imprisonment. Whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transporta-

tion or imprisonment, shall be forfeited to the Government, subject to such provision for his family and dependants as the Government may think fit to allow during such period (s. 62).

III. Forfeiture of specific property.

(1) Whoever commits, or prepares to commit, depradation on the territories of any power at peace with the King shall be liable, in addition to other punishments, to forfeiture of any property used, or intended to be used in such depradation, or acquired thereby (s. 126).

(2) Whoever knowingly receives property taken as above mentioned or in waging war against any Asiatic power at peace with the King, shall forfeit such property (s. 127).

(3) A public servant, who improperly purchases property, which by virtue of his office he is legally prohibited from purchasing, forfeits such property (s. 169).

6. Fine.—Fine is the only punishment in the following cases :—

(1) A person in charge of a merchant vessel, negligently allowing a deserter from the Army or Navy to obtain concealment in such vessel, is liable to a fine not exceeding Rs. 500 (s. 137).

(2) The owner or occupier of land on which a riot or unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with a fine not exceeding Rs. 1,000 (s. 154).

(3) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (s. 155).

(4) The agent or manager of such person under the like circumstances (s. 156).

(5) Committing of a public nuisance not otherwise punishable, is punishable with a fine not exceeding Rs. 200 (s. 290).

(6) Voluntarily vitiating the atmosphere so as to render it noxious to the public health, is punishable with a fine of Rs. 500 (s. 278).

(7) Obstructing a public way or line of navigation, is punishable with a fine not exceeding Rs. 200 (s. 283).

(8) Whoever publishes any proposal to pay any sum or to deliver any goods, or to do or forbear from doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure, in any such lottery, shall be punished with a fine not exceeding Rs. 1,000 (s. 294-A).

7. Whipping.—This form of punishment is added by the Whipping Act under which offenders are liable to whipping as an alternative or an additional punishment for certain offences.

The Whipping Act of 1909 has reduced the number of offences for which this punishment is now inflicted.

In France, Germany and the United States corporal punishment has been abolished.

8. Detention in Reformatories.—Juvenile offenders sentenced to trans-

portation or imprisonment may be sentenced to, and detained in, a Reformatory School for a period of three to seven years[1].

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of transportation for life.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Sentence of Europeans and Americans to penal servitude.

56. Whenever any person being an European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation according to the provisions of Act XXIV of 1855:

Proviso as to sentence for term exceeding ten years, but not for life.

Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment transportation for life shall be reckoned as equivalent to transportation for twenty years.

1 Act VIII of 1897, s. 8.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

Offenders sentenced to transportation how dealt with until transported.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards[1], it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years[2], and not exceeding the term for which by this Code such offender is liable to imprisonment.

Transportation instead of imprisonment.

COMMENT.

This section only enacts a general rule to the effect that in the case of offences for which no transportation is specially mentioned as a punishment and which are punishable with imprisonment for a term of seven years or upwards, it is competent to the Judge to substitute a sentence of transportation as a substantive sentence for that of imprisonment[1]. The term of transportation under this section cannot exceed the term of imprisonment provided by the section under which a conviction is had and cannot be less than seven years.

Ingredients.—The essentials of the section are—

1. The offender must be punishable with imprisonment for *seven* years or upwards in respect of an offence punishable under this Code.

2. The transportation awarded instead of imprisonment should not be less than *seven* years and should not exceed the term for which imprisonment could be inflicted[2].

1. ' Imprisonment for a term of seven years or upwards ':—The punishment for *one* offence alone must be imprisonment for seven years or upwards. It cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation[3]. A general sentence of transportation for two or more offences, when only one of the punishments awarded is seven years' imprisonment, is illegal[4].

2. ' Transportation for a term not less than seven years etc.'—The transportation awarded cannot exceed the imprisonment for which the

1 *Kunhussa*, (1882) 5 Mad. 28.

2 *Arura*, (1903) P. R. No. 31 of 1903.

3 *Mootkee Kora*, (1865) 2 W. R. 1.

4 *Shonaullah*, (1866) 5 W. R. 44.

prisoner might have been sentenced, even though it would have been open to the Court to award a longer period of transportation under the section appropriate to the crime. Thus, where the law gives the alternative punishments of death, transportation for life, and rigorous imprisonment extending to ten years, and the Court does not inflict the extreme penalty, it cannot award more than ten years' transportation[1].

Sentence under a special or local law.—This section does not apply to sentences under a special or local law, *e. g.*, Indian Registration Act[2].

Transportation cannot be substituted for imprisonment in default of fine.—This section does not authorize the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine[3].

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence of forfeiture of property.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property except for the benefit of Government until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

ILLUSTRATION.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

COMMENT.

This section combines the doctrines of escheat and forfeiture known to the English law. Under it the offender is incapable of acquiring any property for himself, but he continues capable of acquiring property for the

1 *Joseph Meriam* (1868) 1 B. L. R. 5; 10 W.R. 10; *Naiada*, (1875) 1 All. 43, F. B.

2 *Muthuramalingam*, (1900) 11 M. L. J. R. 127, 1 Weir 30.

3 *Kunhussa*, (1882) 5 Mad. 28.

benefit of Government. After he has undergone his sentence or has received a remission or pardon, the capacity to acquire and hold property for his own benefit returns to him. But he cannot get back the property which has already been forfeited under this section.

Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and, whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to Government subject to such provision for his family and dependents as the Government may think fit to allow during such period.

COMMENT.

Under this section sentence of forfeiture may be imposed whenever a person is *convicted* of an offence

(1) punishable with *death* (whatever may be the punishment inflicted), or

(2) punishable with *transportation*, or *imprisonment*, for at least *seven* years.

In the former case the Court may adjubge that *all* property of the offender shall be forfeited to Government ; in the latter case, it may only adjudge that the *rents and profits* of his property during the *period* of transportation or imprisonment shall be forfeited to Government.

This section is ordinarily applied in cases of crimes against the State or affecting the safety of the public generally[1].

Amount of fine.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sentence of imprisonment for non-payment of fine.

64. In every case of an offence punishable with imprisonment as well as fine[1], in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with im-

[1] *Gaya Prasad*, (1914) 36 All. 395.

prisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

COMMENT.

The wording of the section is not happy, but the Legislature intended by it to provide for the award of imprisonment in default of payment of fine in all cases in which fine can be imposed to induce the offender to pay the fine.

The cases falling under this section are:—

Where the offence is punishable with—(*a*) imprisonment *with* fine; or (*b*) imprisonment *or* fine, or (*c*) fine only, and the offender is sentenced to (*i*) imprisonment, or (*ii*) fine, or both; the Court may sentence the offender to a term of imprisonment in default of the payment of fine.

1. **'Imprisonment as well as fine'**—The words 'as well as' do not mean here *and*, as will be seen from the concluding words of the first clause, *viz.*, 'whether with or without imprisonment.' The words 'imprisonment as well as fine' include (*a*) offences punishable with imprisonment or fine in the alternative, and (*b*) offences punishable with imprisonment or fine, or both, cumulatively[1].

Limit to imprisonment for non-payment of fine when imprisonment and fine awardable.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

COMMENT.

This section applies to all cases where the offence is 'punishable with imprisonment as well as fine,' *i. e.*, cases where fine and imprisonment can be awarded and also those where the punishment may be either fine or imprisonment but not both. The only cases that it does not apply to are those dealt with in s. 67 where fine only can be awarded[1].

Section 33 of the Criminal Procedure Code acts as a corollary to this section.

[1] *Yakoob Sahib*, (1898) 22 Mad. 238.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence

Description of imprisonment for non payment of fine

COMMENT.

The imprisonment in default of payment of a fine may be either rigorous or simple.

67. If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case

Imprisonment for non payment of fine, when offence punishable with fine only.

COMMENT

This section refers solely to cases in which the offence is punishable with fine only, and has no application to an offence punishable either with imprisonment or with fine, but not with both Such offences are governed by s 65

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law

Imprisonment to terminate on payment of fine

COMMENT

See ss. 386 389 of the Criminal Procedure Code as to the mode in which fine is levied.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Termination of imprisonment on payment of proportional part of fine.

ILLUSTRATION.

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

COMMENT.

If the fine imposed on an accused is paid or levied while he is imprisoned for default of payment, his imprisonment will immediately terminate: and if a proportion of the fine be paid during the imprisonment, a proportional abatement of the imprisonment will take place. The Court has, however, no power to refund fine. Where a prisoner paid a portion of his fine, but, that fact not having been communicated to the jailor, underwent the full term of imprisonment, it was held that, under those circumstances, the Court had no power to order the fine to be refunded[1]. The accused must apply in such a case to Government.

Fine leviable within six years, or during imprisonment.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Death not to discharge property from liability.

COMMENT.

Imprisonment in default of fine does not liberate the offender from his liability to pay the full amount of fine imposed on him. Such imprisonment is not a discharge or satisfaction of the fine but is imposed as a punishment for non-payment or contempt or resistance to the due execution of the sentence. The offender cannot be permitted to choose whether he will suffer in his person or his property. His person will cease to be answerable for the fine. But his property will for a time continue to do so.

[1] *Natha Mula*, (1867) 4 B. H. C. (Cr. C.) 37.

The bar of six years may save the property of the accused but not his personal arrest. The liability for any sentence of imprisonment awarded in default of payment of fine continues after the expiration of six years[1].

Limit of punishment of offence made up of several offences.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

ILLUSTRATIONS.

(*a*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*) But if while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

COMMENT.

The section governs the whole Code and regulates the limit of punishment in cases in which the greater offence is made up of two or more minor offences. It is not a rule of adjective law or procedure, but a rule of substantive law regulating the measure of punishment, and it does not, therefore, affect the question of conviction, which relates to the province of procedure.

The rules for assessment of punishment are laid down in ss. 71 and 72 of the Penal Code and s. 35 of the Code of Criminal Procedure. Section 35 of the Code of Criminal Procedure provides that when a person is convicted at one trial of two or more *distinct* offences, the Court may sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; and in the case of consecutive sentences,

[1] *Ganu Sakharam*, (1884) Unrep. Cr. C. 207.

it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. It, therefore, enhances the ordinary powers of sentences given to Magistrates by s. 32, Criminal Procedure Code; but in order to bring a case within the purview of this section, the accused must have been convicted of two or more *distinct* offences in the same trial, and the sentence for any one of these distinct offences should not exceed the limit of their ordinary powers. The newly added explanation to it says that "separable offences which come within the provision of s. 71 of the Penal Code are *not* distinct offences within the meaning of this section." Before the introduction of this explanation there was a difference of opinion in cases in which a person was charged with committing a certain offence with intent to commit another and also with committing the latter offence, *e. g.*, house-breaking by night with intent to commit theft (s. 457)and theft in a dwelling house (s. 380). The difference arose on the question whether such offences were distinct offences so as to enable a Magistrate to pass separate sentences under s. 35. The new explanation says that they are not distinct offences. It will thus appear that s. 71 of the Penal Code deals with *separable* offences, s. 35 of the Criminal Procedure Code, with *distinct* offences.

Section 235 of the Code of Criminal Procedure contains only rules of criminal pleading in regard to joinder of charges, and it does not deal with the sentence to be passed on the charges of the offences mentioned in the several illustrations. It says:

(1) If in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(4) Nothing contained in this section shall affect the Indian Penal Code, s. 71.

Sec. 71. of Penal Code and s. 235 of Criminal Procedure Code.—Mayne combines both these sections and gives the result, which nearly corresponds to s. 454 of the Criminal Procedure Code of 1872 (Act X of 1872), as follows:—

1. Where the repetition of several offences constitutes one offence of exactly the same character, all the instances taken together can only be treated as making up one offence, though the greater or lesser number of the instances may add to or diminish the heinousness of the offence [*e. g.*, s. 71, ill. (*a*)].

2. When a single transaction or connected series of events give rise to several offences of a different character, or to several offences of the same character affecting different persons, each of such offences is separately indictable and punishable [*e. g.*, s. 71, ill. (*b*), and Crim. Pro. Code, s. 235, ills. (*a*), (*f*) and (*g*)].

3. Where the same facts will constitute different offences, the indictment may, and ought to, charge each such offence so as to meet every possible view of the case. But only one offence has been committed, and the punishment must not exceed that applicable to the graver offence (s. 71, cl.2).

4. Sometimes an act, which is itself an offence, becomes either a different offence, or an aggravated form of the same offence when combined with other facts, either in themselves innocent or criminal. Here also it may be proper not only to charge the offender with the compound offence, but with the minor offences of which it is made up. But if the compound offence is made out, no punishment can be awarded beyond that which can be given in respect of it. For instance, upon the same facts A may be charged for using criminal force under s. 352 and under s. 152 for the same force against a public servant. But though convicted on both charges, he could not receive a higher punishment than that which is provided by the latter section.

Separate punishments.—The infliction of separate punishments is not in violation of the law, provided that the aggregate punishment awarded is not in excess of what the Court could inflict for either of the offences[1].

It is only when one act constitutes two offences under the *same* law, that separate sentences can be inflicted for each offence. Separate sentences under two different Acts for the same specific act are illegal[2].

CASES.

1. **Several offences constituting one offence.**—Where the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two offences of theft[3]. Stealing at the same time two bullocks which belonged to two different owners, and which were tied to the yoke of a cart, was held to constitute only one offence of theft[4]. Where the accused, a guard in charge of a goods train, stole articles belonging to two different persons from separate bags in a truck, it was held that he could not be convicted and sentenced separately for two distinct offences of theft[5].

2. **Single transaction giving rise to several offences.**—An accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit the offences of mischief and assault and also under ss. 426 and 352 for the offences of mischief and assault, and punished separately for each of the offences. These offences formed part of one transaction. It was held that the sentences were legal[6]. An accused who threatened three

1 *Fakira Khan*, (1905) 4 C. L. J. 90.

2 *Rahmatulla*, (1916) 1 P. L. J. 373.

3 *Sheikh Moneeah*, (1869) 11 W. R. 38.

4 *Krishna Shahaji*, (1897) Cr. R. No. 33 of 1897, Unrep. Cr. C. 927.

5 *Har Dial*, (1905) P. R. No. 58 of 1905.

6 *Nirichan*, (1888) 12 Mad. 36.

witnesses, was convicted and sentenced to four months' imprisonment for threat to each witness. It was held that if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, he may be convicted for an offence as against each person, and be punished separately for each offence[1].

Rioting and grievous hurt.—The question as to whether a member of an unlawful assembly, some members of which have caused grievous hurt, can be punished for the offence of rioting, as well as for the offence of causing grievous hurt, has led to a divergence of opinion between the High Courts of Bombay and Allahabad and the Chief Court of the Punjab on one side, and the High Court of Calcutta on the other.

All the High Courts are unanimous on the point that where an accused is guilty of riot and has also by his own hands caused grievous hurt, separate sentences may be passed for each of the two offences without regard to the limit of the combined sentences. In such a case the total punishment can legally exceed the maximum which the Court might pass for any one of the offences[2].

But where the accused is convicted of rioting and of hurt which he has not himself committed but for which he is liable under s. 149, there is a difference of opinion.

A Full Bench of the Calcutta High Court has ruled that separate sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code[3].

A Full Bench of the Bombay High Court has decided that where a prisoner is convicted of rioting and of hurt, and the conviction for hurt depends upon the application of s. 149 of the Penal Code, it is not illegal to pass two sentences, one for riot, and one for hurt: provided the total punishment does not exceed the maximum which the Court might pass for any one of the offences[4]. These offences will not be regarded as distinct offences within the meaning of the explanation added to s. 35 of the present Code of Criminal Procedure.

The several decisions of the Allahabad High Court are not unanimous on this question. In an early case, Straight, J., decided that a member of an unlawful assembly, some members of which had caused grievous hurt, could not lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt[5]. In two subsequent cases, however, the ruling in this case has not been approved of[6].

1 *Goolzar Khan*, (1868) 9 W. R. 30.

2 *Bana Punja*, (1892) 17 Bom. 260, F.B.; *Ferasat*, (1891) 19 Cal. 105; *Pershad*, (1845) 7 All. 414, F. B. Judgments of Oldfield and Duthoit, JJ., in *Ram Sarup*, (1885) 7 All. 757, F.B.

3 *Nilmony Poddar*, (1889) 16 Cal. 442, F.B.; overruling *Loke Nath Sarkar*, (1885) 11 Cal. 349.

4 *Bana Punja*, (1892) 17 Bom. 260, F.B.

5 *Ram Partap*, (1883) 6 All. 121.

6 *Bisheshar*, (1887) 9 All. 645, 650; *Wazir Jan*, (1887) 10 All. 58.

Recently it has held that where several persons are charged with rioting, some of whom are guilty of causing simple hurt, there is no legal objection to charging those who have caused hurt under s. 323, Indian Penal Code, and convicting them of, and sentencing them for, such offence as well as for the offence of rioting[1].

The Chief Court of the Punjab has in a Full Bench case laid down two propositions: (1) Separate sentences for the offence of rioting and grievous hurt cannot be legally imposed upon a member of an unlawful assembly, where the offence of rioting was not itself complete until the grievous hurt was actually inflicted, that is to say, where the causing of the hurt was itself the form of force or violence which constituted the offence of rioting; (2) separate sentences cannot be awarded where the first clause of s. 71 of the Penal Code applies, and the offence committed is made up of parts, any of which part is itself an offence, but they can be legally awarded where distinct offences not made up of parts are proved to have been committed by one member of an unlawful assembly in prosecution of the common object of that assembly, or where the members of it knew that such offences were likely to be committed in prosecution of that object[2].

The explanation and the illustration to s. 35 of the present Code of Criminal Procedure are new, as also the power to pass concurrent sentences. These, as well as some other verbal alterations in this section, make the law more clear in respect of the difference between *separable* offences dealt under s. 71, Indian Penal Code, and *distinct* offences for which separate and additional sentences may be passed beyond the ordinary powers of a Magistrate. Thus, in the case of conjoint offences when the usual element is one, though the acts or aspects are several, Courts may now pass, in case of conviction, under the several heads of the charge, concurrent sentences. The confusion in applying the correct rule shown by the reported cases is thus avoided.

3. **Same facts constituting different offences.**—An accused cannot be punished at the same time for committing an offence by fire with intent to destroy a warehouse (s. 436) and for the offence of mischief by fire (s. 435)[3]. Where a mother abandoned her child, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, it was held that she could not be convicted and punished under s. 304 and also under s. 317, but under s. 304 only[4]. A person cannot be punished for rioting and also for being a member of an unlawful assembly[5]; for rioting and for wrongful confinement, when the common object of the unlawful assembly is the wrongful confinement[6]; for culpable homicide and for being a member of an unlawful assembly armed with a deadly weapon[7]; for dishonestly receiving stolen property (s. 411) and for assisting in the concealment of stolen property

[1] *Katwaru Rai*, (1917) 39 All. 623.
[2] *Bhagwan Singh*, (1901) P. R. No. 4 of 1901, F. B.
[3] *Dod Basaya*, (1874) 11 B. H. C. 13, 15.
[4] *Banni*, (1879) 2 All. 349.
[5] *Meelan Khalifa* v. *Dwarkanath Goopto*, (1864) 1 W. R. 7.
[6] *Alim Sheikh* v. *Shahazada Singh Burkundaz*, (1904) 8 C. W. N. 483.
[7] *Rubbeeoolah*, (1867) 7 W. R. 13.

(s. 414)[1]; for abducting a child with intent dishonestly to take moveable property, and also for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction[2].

4. An act giving rise to an offence and an aggravated form of the same offence.—A Full Bench of the Bombay High Court has held:—

(1) that a person who has committed house-breaking in order to commit theft (s. 457) and theft (s. 380) can be charged with, and convicted of, each of these offences;

(2) that a Court in awarding punishment (under s. 71) should pass one sentence for either of the offences in question, and not a separate one for each offence;

(3) that if two sentences are nevertheless passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court, that would be an *irregularity* only and not an *illegality*[3].

The Calcutta High Court has held that house-breaking by night and theft form a single and an entire offence, and cannot be punished separately[4].

The Madras High Court has laid down: "Where several facts aggregated form one offence and if severed constitute several, the offender may be charged with every offence committed but the utmost punishment awardable is the extreme punishment for the concrete or for one of the separate offences". It has, therefore, held that a prisoner tried, convicted, and punished under s. 369 for abducting a child with intent dishonestly to take moveable property, cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction[5].

The Allahabad High Court has held in a case where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, that he could not receive a punishment more severe than might have been awarded for either of such offences[6]. In another case the accused were tried for offences under ss. 170 and 383, committed in the same transaction, and it appeared that but for personating a public servant the accused would not have been in a position to commit the act of extortion. It was held that the former offence was completed before the latter had begun, and the separate sentence for each offence was not illegal[7].

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment

1 (1868) 4 M. H. C. App. 13.
2 *Noujan*, (1874) 7 M. H. C. 375.
3 *Malu Arjun*, (1899) 1 Bom. L. R. 142, 23 Bom. 706, F. B.
4 *Tonaokoch*, (1865) 2 W. R. 63.
5 *Noujan*, (1874) 7 M. H. C. 375.
6 *Budh Singh*, (1879) 2 All. 101.
7 *Wazir Jan*, (1887) 10 All. 58.

is provided if the same punishment is not provided for all.

COMMENT.

This provision is intended to prevent an offender whose guilt is fully established from eluding punishment on the ground that the evidence does not enable the tribunal to pronounce with certainty under what penal provision his case falls. The section applies to cases in which the law applicable to a certain set of facts is doubtful. The doubt must be as to which of the offences the accused has committed, not whether he has committed either.

Solitary confinement.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion[1] or portions of the imprisonment to which he is sentenced, not exceeding three months[2] in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months:

a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year:

a time not exceeding three months if the term of imprisonment shall exceed one year.

COMMENT.

Solitary confinement amounts to keeping the prisoner thoroughly isolated from any kind of intercourse with the outside world. It is inflicted in order that a feeling of loneliness may produce wholesome influence and reform the criminal. This section gives the scale according to which solitary confinement may be inflicted.

In England the power to impose solitary punishment, though it was very rarely exercised by a Criminal Court as part of its sentence, has been done away with.

1. 'Any portion.'—These words imply that the solitary confinement if inflicted for the whole term of imprisonment is illegal[1].

2. 'Not exceeding three months.'—In the case of simultaneous convictions, the award of separate terms of solitary confinement, which in the aggregate exceed three months, is legal[2]: but, as a matter of practice, a sentence of more than three months' solitary confinement should not be passed on a person convicted at one trial of more than one offence[3].

[1] *Nyan Suk Mether*, (1869) 3 B. L. R. 49.
[2] *Nihala*, (1877) P. R. No. 11 of 1877.
[3] *Ibrahim*, (1897) P. R. No. 7 of 1897.

Solitary confinement for imprisonment in lieu of fine.—Where imprisonment is not part of the substantive sentence, solitary confinement cannot be awarded[1]; so also it cannot be awarded as part of the imprisonment in lieu of fine[2].

Limit of solitary confinement.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

COMMENT.

Solitary confinement if continued for a long time is sure to produce mental derangement.

This section limits the solitary confinement, when the substantive sentence exceeds three months, to *seven* days in any one month. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than fourteen days is awarded[3].

Enhanced punishment for certain offences under Ch. XII or Ch. XVII after previous conviction.

75. Whoever, having been convicted[1],—

(*a*) by a Court in British India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, or

(*b*) by a Court or tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor-General in Council or of any Local Government, of an offence which would, if committed in British India, have been punishable under those chapters of this Code with like imprisonment for the like term, shall be guilty of any offence punishable under

[1] *Umr Singh*, (1869) P. R. No. 20 of 1869.

[2] *Nyan Suk Mether*, (1869) 3 B. L. R. 49.

[3] *Jita*, (1873) P. R. No. 26 of 1873.

either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

COMMENT.

This section has been introduced by Act III of 1910. It now enables the Courts in British India to recognise previous convictions by Courts in Native States which exercise their jurisdiction under the general or special authority of the Government of India or of a Local Government.

Principle.—This section does not constitute a separate offence, but only imposes a liability to enhanced punishment.

The meaning of the section is, that when an offender, being punished

(*a*) by a Court in British India, or

(*b*) by a Court in the territory of a Native State acting under the authority of Government.

(*c*) for an offence under Chap. XII (offences relating to coin and Government stamp) or Chap. XVII (offences against property) of the Code, punishable with three years' imprisonment, commits an offence of a similar description after his release from prison, he is liable to increased punishment, on the ground that the punishment undergone has had no effect in preventing a repetition of the crime.

To bring an offence within the terms of this section three conditions must be fulfilled :—

(1) The offence must be one under either Chapter XII or XVII of this Code.

(2) The previous conviction must have been for an offence therein punishable with imprisonment for not less than three years.

(3) The subsequent offence must also be punishable with imprisonment for not less than three years.

The previous and subsequent offences must be offences of the class punishable with imprisonment for a term of three years or upwards. It is not necessary that the punishment actually awarded for the first offence should have been imprisonment for three years.

1. 'Having been convicted.'—The section declares that if any person, *having been convicted* of any offence punishable under certain Chapters, shall be guilty of any offence punishable under those Chapters, he shall for every such subsequent offence be liable to the penalties therein declared. Where therefore a person committed an offence punishable under Chapter XII or XVII with imprisonment of three years, and *previously to his being convicted* of such offence, committed another such offence, it was held that he was not subject, on being convicted of the second offence, to the enhanced punishment provided by this section[1]. Similarly the section is not applicable where offences are committed at one and the same time[2]. Because it postulates

[1] *Megha*, (1878) 1 All. 637 ; *Sakya Kavji*, (1868) 5 B. H. C. (Cr. C.) 36.

[2] *Jhoomuck Chamar*, (1866) 6 W. R. 90.

the commission of the offence which forms the subject of the subsequent charge at a period subsequent to the date of the offence of which the accused was before convicted. The accused cannot be charged with a conviction for an offence committed subsequent to the date of the offence for which he is on his trial[1].

Clause (a).—The offence should not only be an offence under Chapter XII or Chapter XVII but it should be punishable with imprisonment for a term of three years or upwards[2]. It is not necessary that the punishment actually awarded for the first offence should have been imprisonment for three years. But both the previous and subsequent offences shall be offences of the class punishable with imprisonment for a term of three years or upwards[3].

Clause (b).—Under this clause the Court or tribunal in the territory of a Native Prince or State in India must be acting under the general or special authority of the Local or Supreme Government. Conviction by a Court in a Native State which is not under such authority cannot, therefore, be taken into consideration in enhancing punishment under this section.

Attempt.—This section does not apply to cases of attempts not specially made offences in Chapters XII and XVII of the Code[4]; nor to cases of offences which fall under s. 511 of the Code[5].

Abetment.—The previous conviction of an accused for an offence under Chapters XII and XVII cannot be taken into consideration at a subsequent conviction for abetment of an offence under those Chapters for the purpose of enhancing punishment under this section[6].

Punishment.—Under this section if a sentence of transportation is awarded it must be for life. The Court can, however, under this section, sentence the offender, in the alternative, to imprisonment for a term which may extend to ten years and thereafter under the provisions of s. 59 the Court can, instead of awarding sentence of imprisonment, sentence the offender to transportation for a term not less than seven years and not exceeding the term for which under the Code such offender is liable to imprisonment[7].

CHAPTER IV.

GENERAL EXCEPTIONS.

THIS Chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

[1] (1875) 1 Weir 39.
[2] *Chandaria*, (1911) P. L. R. No. 235 of 1911, P. W. R. (Cr.) No. 36 of 1911.
[3] (1874) 1 Weir 38.
[4] *Nana Rahim*, (1880) 5 Bom. 140; *Ram Dayal*, (1881) 3 All. 773; *Sricharan Bauri*, (1887) 14 Cal. 357.
[5] *Bharosa*, (1895) 17 All. 123; *Ajudhia*, (1895) 17 All. 120.
[6] *Kashia Antoo*, (1907) 10 Bom. L. R. 26.
[7] *Muhammad Sharif*, (1915) P. R. No. 14 of 1915.

The word 'offence' in this chapter denotes a thing punishable under the Code or under special or local law (s. 40).

The following acts are exempted under the Code from criminal liability:-

1. Act of a person bound by law to do a certain thing (s. 76).
2. Act of a Judge acting judicially (s. 77).
3. Act done pursuant to an order or a judgment of a Court (s. 78).
4. Act of a person justified, or believing himself justified, by law (s. 79).
5. Act caused by accident (s. 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (s. 81).
7. Act of a child under 7 years.
8. Act of a child above 7 and under 12 years but of immature understanding (s. 83).
9. Act of a person of unsound mind (s. 84).
10. Act of an intoxicated person (s. 85).
11. Act not known to be likely to cause *death* or *grievous hurt* done by consent of the sufferer (s. 87).
12. Act not intended to cause death done by consent of sufferer (s. 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (s. 89).
14. Act done in good faith for the benefit of a person without consent (s. 92).
15. Communication made in good faith to a person for his benefit (s. 93).
16. Act done under threat of death (s. 94).
17. Act causing slight harm (s. 95).
18. Act done in private defence (ss. 96-106).

The above exceptions, strictly speaking, come within the following seven categories:-

1. Judicial acts (ss. 77, 78).
2. Mistake of fact (ss. 76, 79).
3. Accident (s. 79).
4. Absence of criminal intent (ss. 81-86, 92-94).
5. Consent (ss. 87-90).
6. Trifling acts (s. 95).
7. Private defence (ss. 96-106).

Onus of proving an exception lies on the accused.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances[1].

Act done by a person bound, or by mistake of fact believing himself bound by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact[1] and not by reason of a mistake of law[2] in good faith believes himself to be, bound by law[3] to do it.

ILLUSTRATIONS.

(*a*) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

[1] The Indian Evidence Act, I of 1872, s. 105.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

COMMENT.

This section excuses a person who has done what by law is an offence, under a misconception of facts, leading him to believe in good faith that he was commanded by law to do it. See comment on s. 79, *infra*.

This section and sections 77-78 and 79 deal with acts of a person bound or justified by law. This section as well as sections 78 and 79 deal with acts of a person under a mistake.

1. **'Mistake of fact.'**—See Comment under s. 79, *infra*.

2. **'Mistake of law.'**—See Comment under s. 79, *infra*.

3. **'In good faith believes himself to be bound by law.'**—In order to entitle a person to claim the benefit of this section it is necessary to show the existence of a state of facts which would justify the belief in good faith, interpreting the latter expression with reference to s. 52, that the person to whom the order was given was bound by law to obey it. Thus in the case of a soldier, the Penal Code does not recognize the mere duty of blind obedience to the commands of a superior as sufficient to protect him from the penal consequences of his act.

For illegal acts, however, neither the orders of a parent nor a master will furnish any defence.

Liability of private persons to assist the Police.—Private persons who are bound to assist the police under s. 42 of the Code of Criminal Procedure will be protected under this section.

CASE.

Act done under a superior's order.—Nothing but fear of instant death is a defence for a police-man who tortures any one by order of a superior. The maxim *respondeat superior* has no application in such a case[1].

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

COMMENT.

Under this section a Judge is exempted not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives to him, but also in cases where he, in good faith, exceeds his jurisdiction and has no lawful powers. It protects Judges from criminal process just as the Judicial Officers' Protection Act, 1850, saves them from civil suits.

Act done pursuant to the judgment or order of Court.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of justice, if done whilst such

[1] *Latifkhan*, (1895) 20 Bom. 394.

judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

COMMENT.

This section is merely a corollary to s. 77. It affords protection to officers acting under the authority of a judgment or order of a Court of justice. It differs from s. 77 on the question of jurisdiction. Here, the officer is protected in carrying out an order of a Court which may have no jurisdiction at all, if he believed that the Court had jurisdiction; whereas under s. 77 the Judge must be acting within his jurisdiction to be protected by it. It was Lord Hale's opinion that the order of a Court, having a colour of jurisdiction though acting erroneously, is enough to justify the ministerial officer.

Mistake of law can be pleaded as a defence under this section.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact[1] and not by reason of a mistake of law[2] in good faith, believes himself to be justified by law in doing it.

ILLUSTRATION.*

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

COMMENT.

Distinction between ss. 76 and 79.—The distinction between s. 76 and this section is that in the former a person is assumed to be bound, and in the latter to be justified by law, in other words, the distinction is between a real or supposed legal *obligation* and a real or supposed legal justification, in doing the particular act.

Under both these sections there must be a *bona fide* intention to advance the law, manifested by the circumstances attending the act which is the subject of the charge; and the party accused cannot allege generally that he had a good motive, but must allege specially that he believed in good faith that he was bound by law (s. 76,) to do as he did, or that being empowered by law (s. 79) to act in the matter, he had acted to the best of his judgment exerted in good faith[1].

1. 'Mistake of fact.'—'Mistake' is not mere forgetfulness[2]. It is a slip "made, not by design but by chance[3]". Under ss. 76 and 79 a mistake

[1] 1st Rep., s. 114.

[2] Per Lord Esher, M. R., in *Barrow v. Isaacs*, [1891] 1 Q. B. 417.

[3] Per Lord Russell, C. J., in *Sandford v. Beal*, (1895) 65 L. J. Q. B. 73.

must be one of fact and not of law. At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy[1]. It may be laid down as a general rule that an alleged offender is deemed to have acted under that state of facts which he in good faith and on reasonable grounds believed to exist when he did the act alleged to be an offence[2]. *Ignorantia facti* doth excuse, for such an ignorance many times makes the act itself morally involuntary. Similarly, where a man made a thrust with a sword at a place where, upon reasonable grounds, he supposed a burglar to be, and killed a person who was not a burglar, it was held that he had committed no offence[3]. In other words, he was in the same situation as far as regarded the homicide as if he had killed a burglar.

But where an act is clearly a wrong in itself, and a person, under a mistaken impression as to facts which render it criminal, commits the act, then according to the *ratio decidendi* in *Prince's case*[4] he will be guilty of a criminal offence.

2. **'Mistake of law.'** —Mistake in point of law in a criminal case is no defence. "Ignorance of the municipal law of the kingdom, or of the penalty thereby inflicted upon offenders, doth not excuse any one that is of the age of discretion and *compos mentis*, from the penalty of the breach of it; because every person of the age of discretion and *compos mentis* is bound to know the law, and presumed so to do"[5].

If any individual should infringe the statute law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not competent to him to aver in a Court of Justice that he was ignorant of the law of the land, and that no Court of Justice is at liberty to receive such a plea[6].

The maxim *ignorantia juris non excusat*, in its application to criminal offences, admits of no exception, not even in the case of a foreigner who cannot reasonably be supposed in fact to know the law of the land[7]. In a case two Frenchmen were charged with wilful murder because they had acted as seconds in a duel in which one man had met his death. They alleged that they were ignorant of the fact that by the law of England killing an adversary in a fair duel amounts to murder. But the plea was overruled[8].

Ignorance of a statute newly passed.—Although a person commits an act which is made an offence for the first time by a statute so recently passed as to render it impossible that any notice of the passing of the statute

[1] Per Cave, J., in *Tolson*, (1889) 23 Q. B. D. 168, 181.

[2] Per Stephens, J., in *ibid*, p. 188.

[3] 1 Hale P. C., pp. 42, 474.

[4] (1875) L. R. 2 C. C. R. 154. See *Tolson*, supra.

[5] 1 Hale P. C. 42.

[6] *Fischer*, (1891) 14 Mad. 342, 354.

[7] *Esop*, (1836) 7 C. & P. 456.

[8] *Barronet*, (1852) Dearsly 51.

could have reached the place where the offence has been committed, yet his ignorance of the statute will not save him from punishment[1].

Act of state.—An act of state is an act injurious to the person or to the property of some person who is not at the time of that act a subject of His Majesty; which act is done by any representative of His Majesty's authority, civil or military, and is either previously sanctioned or subsequently ratified by His Majesty. The doctrine as to acts of State can apply only to acts which affect foreigners, and which are done by the orders or with the ratification of the sovereign. As between the sovereign and his subjects there can be no such thing as an act of State. Courts of law are established for the express purpose of limiting public authority in its conduct towards individuals. If one British subject puts another to death or destroys his property by the express command of the King, that command is no protection to the person who executes it unless it is in itself lawful, and it is the duty of the proper Courts of justice to determine whether it is lawful or not. But as between British subjects and foreigners, the orders of the Crown justify what they command so far as British Courts of justice are concerned[2].

Persons carrying out an act of State under proper orders will be protected by the Penal Code, in the same way as if they were carrying out a lawful order under the municipal law. To support a plea of this nature two things are essential :—

(1) that the defendant had authority to act on behalf of the Crown in the matter ; and

(2) that in so acting, he was professing to act as a matter of policy, outside the law, and not as a matter of right within the law.

Liability of private persons.—Private persons acting under ss. 43, 59, 77 and 78 of the Code of Criminal Procedure will be protected under this section.

CASES.

Mistake of fact. *Good defence.*—The accused, a police constable, saw the complainant early one morning, carrying under his arm three pieces of cloth. Suspecting that the cloth was stolen, he went up to the complainant and questioned him. The complainant gave answers that were not satisfactory and refused to allow the constable to inspect the cloth and a scuffle thereupon ensued between the two. The complainant was arrested by the constable, but was released by the Inspector of Police. The complainant then prosecuted the constable for wrongful restraint and confinement, and the Magistrate convicted the constable of the said offence. The High Court held that the conviction was wrong as the constable acted under a *bona fide* belief that he was legally justified in detaining what he suspected to be stolen property. The putting of questions to the complainant to clear up his suspicions was an indication of good faith, and he was, therefore, protected by this section.[3]

[1] *Richard Bailey*, (1800) R. & R. 1.

[2] Stephen's History of the Criminal Law of England, Vol. II, pp. 61, 65.

[3] *Bhawoo Jivaji* v. *Mulji Dayal*, (1888) 12 Bom. 377.

English cases.—The prisoner was convicted of bigamy, having gone through the ceremony of marriage within seven years after she had been deserted by her husband. She believed in good faith and on reasonable grounds that her husband was dead. It was held that a *bona fide* belief on reasonable grounds in the death of the husband at the time of the second marriage afforded a good defence to the indictment, and that the conviction was wrong[1].

Bad defence.—A Police Officer saw a horse tied up in B's premises and because it happened to resemble one which his father had lost a short time previously, he jumped at once to the conclusion that B had either stolen the horse himself, or had purchased it from the thief, and compelled B to account for his possession. The officer found that B had bought the animal from one S; so he sent for S, charged him with the theft, and compelled him to give bail whilst an investigation was pending. The Officer never sent for the supposed owner of the horse, or took the trouble of getting any credible information as to whether it was his father's horse or not. It was held that the Police Officer had not acted in good faith, that is, with due care and attention and that this section did not protect him[2].

English cases.—The accused took an unmarried girl under the age of sixteen years out of the possession, and against the will of her father. The defence of the accused was that he *bona fide* and reasonably believed that the girl was older than sixteen. It was held that as the taking of the girl was unlawful the defence was bad[3]. This case may be distinguished from *Tolson's case*, in which a woman married believing her husband to be dead. There the conduct of the woman was not in the smallest degree immoral, but was, on the other hand, perfectly natural and legitimate.

Accident in doing a lawful act.

80. Nothing is an offence which is done by accident[1] or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

ILLUSTRATION.

A is at a work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

COMMENT.

This section exempts the doer of an innocent or lawful act in an innocent or lawful manner and without any criminal intention or knowledge from any unforeseen evil result that may ensue from accident or misfortune.

1. '**Accident.**'—An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its

[1] *Tolson*, (1889) 23 Q. B. D. 168.
[2] *Sheo Surun Sahai* v. *Mahomed Fazil Khan*, (1868) 10 W. R. 20.
[3] *Prince*, (1875) L. R. 2 C. C. R. 154.

occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it[1]. An accident is something that happens out of the ordinary course of things[2]. The idea of something fortuitous and unexpected is involved in the word 'accident'[3]. An injury is said to be accidentally caused whensoever it is neither wilfully nor negligently caused[4].

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention[1] to cause harm and in good faith for the purpose of preventing or avoiding other harm to person or property.[2]

Explanation.—It is a question of fact in a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

ILLUSTRATIONS.

(*a*) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(*b*) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

COMMENT.

An act which would otherwise be a crime may in some cases be excused

[1] *Fenwick* v. *Schmalz*, (1868) L. R. 3 C. P. 313, 316.

[2] Per Lord Halsbury in *Hamilton Fraser & Co.* v. *Pandorf & Co.*, (1887) 12 App. Cas. 518, 524.

[3] 10th Par. Rep. 16.

[4] Stephen's Digest of Crim. L., Art. 231.

[5] *Fenwick* v. *Schmalz*, sup.

[6] Per Lord Halsbury in *Hamilton Fraser & Co.* v. *Pandorf & Co.*, sup.

if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which, if they had followed, would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided[1].

1. **'Without any criminal intention.'**—Under no circumstances can a person be justified in intentionally causing harm; but if he cause the harm without any criminal intention, and merely with the knowledge that it is likely to ensue, he will not be held responsible for the result of his act, provided it be done in good faith to avoid or prevent other harm to person or property.

'Criminal intention' simply means the purpose or design of doing an act forbidden by the criminal law without just cause or excuse. An act is intentional if it exists in idea before it exists in fact, the idea realising itself in the fact because of the desire by which it is accompanied. The motive for an act is not a sufficient test to determine its criminal character. By a motive is meant anything that can contribute to give birth to, or even to prevent, any kind of action. Motive may serve as a clue to the intention; but although the motive be pure, the act done under it may be criminal. Purity of motive will not purge an act of its criminal character.

Mens rea.—It is one of the principles of the English criminal law that a crime is not committed if the mind of the person doing the act in question be innocent. It is said that *actus non facit reum, nisi mens sit rea* (the intent and act must both concur to constitute the crime).

The maxim has not so wide an application as it is sometimes considered to have. It has undergone a modification owing to the greater precision of modern statutes. It is impossible to apply it generally to all statutes, and the substance of all the reported cases is that it is necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is of the essence of the offences created. Crimes are at the present day much more accurately defined by statute or otherwise than they formerly were.

It is, however, held that *mens rea* is an essential ingredient in every offence except in three cases:

(1) cases not criminal in any real sense but which in the public interest are prohibited under a penalty;

(2) public nuisances; and

(3) cases criminal in form but which are really only a summary mode of enforcing a civil right.

The maxim *actus non facit reum, nisi mens sit rea* has however no application to the offences under the Penal Code. Because the definitions of various offences contain expressly a proposition as to the state of mind of the accused. The definitions state whether the act must have been done 'voluntarily,' 'knowingly,' 'dishonestly,' or 'fraudulently' or the like. Every ingredient of the offence is stated in the definitions.

[1] Stephen's Digest of Crim. L., Art. 33.

2. **'Preventing...harm to person or property.'**—This is the case in which evil is done to prevent a greater evil. It is to this ground of justification that we must refer the extreme measures which may become necessary on occasions of contagious diseases, sieges, famines, tempests, shipwrecks.

Doctrine of self-preservation.—The First Law Commissioners remark :—"We long considered whether it would be advisable to except from the operation of the penal clauses of the Code acts committed in good faith from the desire of self-preservation ; and we have determined not to except them.

"We admit, indeed, that many acts falling under the definition of offences ought not to be punished when committed from the desire of self-preservation ; and for this reason, that, as the Penal Code itself appeals solely to the fears of men, it never can furnish them with motives for braving dangers greater than the dangers with which it threatens them. Its utmost severity will be inefficacious for the purpose of preventing the mass of mankind from yielding to a certain amount of temptation. It can, indeed, make those who have yielded to the temptation miserable afterwards. But misery which has no tendency to prevent crime is so much clear evil. It is vain to rely on the dread of a remote and contingent evil as sufficient to overcome the dread of instant death, or the sense of actual torture. An eminently virtuous man indeed will prefer death to crime; but it is not to our virtue that the penal law addresses itself ; nor would the world stand in need of penal laws if men were virtuous. A man who refuses to commit a bad action, when he sees preparations made for killing or torturing him unless he complies, is a man who does not require the fear of punishment to restrain him. A man, on the other hand, who is withheld from committing crimes solely or chiefly by the fear of punishment, will never be withheld by that fear when a pistol is held to his forehead or a lighted torch applied to his fingres for the purpose of forcing him to commit a crime.

"Nothing is more usual than for pirates, gang-robbers and rioters to excuse their crimes by declaring that they were in dread of their associates, and durst not act otherwise. Nor is it by any means improbable that this may often be true. Nay, it is not improbable that crews of pirates and gangs of robbers may have committed crimes which every one among them was unwilling to commit, under the influence of mutual fear : but we think it clear that the circumstance ought not to exempt them from the full severity of the law.

"Again, nothing is more usual than for thieves to urge distress and hunger as excuses for their thefts. It is certain, indeed, that many thefts are committed from the pressure of distress so severe as to be more terrible than the punishment of theft, and than the disgrace which that punishment brings with it to the mass of mankind. It is equally certain that, when the distress from which a man can relieve himself by theft is more terrible than the evil consequences of theft, those consequences will not keep him from committing theft ; yet it by no means follows that it is irrational to punish him for theft ; for though the fear of punishment is

not likely to keep any man from theft when he is actually starving, it is very likely to keep him from being in a starving state. It is of no effect to counteract the irresistible motive which immediately prompts to theft; but it is of great effect to counteract the motives to that idleness and that profusion which end in bringing a man into a condition in which no law will keep him from committing theft. We can hardly conceive a law more injurious to society than one which should provide that as soon as a man who had neglected his work, or who had squandered his wages in stimulating drugs, or gambled them away, had been thirty-six hours without food, and felt the sharp impulse of hunger, he might, with impunity, steal food from his neighbours."[1]

But in their First Report the Commissioners say: "We think that a distinction may be drawn between cases in which a man does a thing which is an offence by law, spontaneously, to save his own life, and cases in which he does such a thing, from what is called duress, that is from the compulsion of others to save his life threatened by them.

"With respect to the former, we agree with the authors of the Code that it is impossible to define precisely those cases in which it may be proper to excuse the parties, and that it is expedient to leave them to the discretion of the Government."[2] They then proposed s. 64 to meet the latter kind of cases.

As to the doctrine of compulsion and necessity, see Comment on s. 94, *infra*.

CASES.

Where a Chief Constable, not in his uniform, came to a fire and wished to force his way past the military sentries placed round it, was kicked by a sentry, it was held that as the sentry did not know who he was, the kick was justifiable for the purpose of preventing much greater harm under this section and as a means of acting up to the military order[3]. A person placed poison in his toddy pots, knowing that if taken by a human being, it would cause injury, but with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from his pots. The toddy was drunk by and caused injury to some soldiers who purchased it from an unknown vendor. It was held that the person was rightly convicted under s. 328, and that this section did not apply[4].

English cases.—A man who, in order to escape death from hunger, kills another for the purpose of eating his flesh, is guilty of murder; although at the time of the act he is in such circumstances that he believes and has reasonable ground for believing that it affords the only chance of preserving his life. At the trial of an indictment for murder it appeared that the prisoners D and S, seamen, and the deceased, a boy between seventeen and eighteen, were cast away in a storm on the high seas, and compelled to put into an open boat; that the boat was drifting on the ocean and was probably more than 1,000 miles from land; that on the eighteenth day, when they had

[1] Note B.

[2] Sections 167, 168.

[3] *Bostan Futtekhan*, (1892) 17 Bom. 626.

[4] *Dhania Daji*, (1868) 5 B. H. C. (Cr. C.) 59.

been seven days without food and five without water, D proposed to S that lots should be cast who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy that their lives should be saved; that on the twentieth day, D, with the assent of S, killed the boy, and both D and S fed on his flesh for four days; that at the time of the act there was no sail in sight nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy, or one of themselves, they would die of starvation. It was held that upon these facts there was no proof of any such necessity as could justify the prisoners in killing the boy, and that they were guilty of murder[1]

A and B, swimming in the sea after a ship wreck, get hold of a plank not large enough to support both, A pushes off B, who is drowned. This, in the opinion of Sir James Stephen, is not a crime as A thereby does B no direct bodily harm but leaves him to his chance of getting another plank

Act of a child under seven years of age.

82. Nothing is an offence which is done by a child under seven years of age

COMMENT

Under the age of seven years no infant can be guilty of a crime; for under that age an infant is, by presumption of law, *doli incapax*, and cannot be endowed with any discretion If the accused were a child under seven years of age, the proof of that fact would be *ipso facto* an answer to the prosecution[2]

Act of a child above seven and under twelve of immature understanding

83 Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

COMMENT.

Where the accused is above seven years of age and under twelve, the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct, and such non attainment would have apparently to be specially pleaded and proved, like the incapacity of a person who, at the time of doing an act charged as an offence, was alleged to have been of unsound mind. The Legislature is manifestly referring in this section to an exceptional immaturity of intellect[4]. The circumstances of a case

[1] *Dudley and Stephens*, (1884) 14 Q. B. D. 273

[2] 1 Hale P. C. 27, 28.

[3] *Lukhini Agradanini*, (1874) 22 W. R 27.

[4] *Ibid*, pp. 27, 28.

may disclose such a degree of malice as to justify the maxim *malitia supplet ætatem*[1].

English law.—According to the English law an infant between the age of seven and fourteen years is presumed to be *doli incapax.* If a child more than seven and under fourteen years of age is indicted for felony it will be left to the jury to say whether the offence was committed by the prisoner, and, if so, whether at the time of the offence the prisoner had a guilty knowledge that he was doing wrong[2].

An infant above fourteen and under twenty-one is subject to all kinds of punishments; for it is *presumptio juris* that after fourteen years they are *doli capaces*, and can discern between good and evil[3].

CASES.

Theft by a child.—Where a child of nine years of age stole a necklace worth Rs. 2-8, and immediately afterwards sold it to the accused for 5 annas, the child was discharged by the Magistrate under this section, but the accused was convicted by the High Court because the act of the child, though under twelve years of age, showed that he had attained a sufficient maturity of understanding to judge of the nature and consequences of his conduct, and that the act of the child was, therefore, a theft, and that the accused was rightly convicted of receiving stolen property[4].

Act of a person of unsound mind.

84. Nothing is an offence which is done by a person who, at the time of doing it[1], by reason of unsoundness of mind[2], is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law[3].

COMMENT.

This section lays down the legal test of responsibility in cases of alleged unsoundness of mind. Under this section a person will be exonerated from liability for doing an act on the ground of unsoundness of mind if he *at the time of doing it* is either

(1) incapable of knowing the nature of the act, or

(2) that he is doing what is either wrong or contrary to law.

There are four kinds of persons who may be said to be *non compos mentis* (not of sound mind,: (1) an idiot; (2) one made *non compos* by sickness; (3) a lunatic or mad; and (4) one that is drunk.

(1) An idiot is a fool or madman from his nativity, and one who never had any lucid intervals; and such a one is described as a person that cannot number twenty, tell the days of the week, does not know his father or mother, his own age, etc.[5].

(2) A person made *non compos mentis* by sickness is excused in criminal

1 *Mussumat Aimona*, (1864) 1 W. R. 43.

2 *Elizabeth Owen*, (1830) 4 C. & P. 236.

3 1 Hale P. C. 5.

4 *Begarayi Krishna*, (1883) 6 Mad. 373.

5 Russell 118; Archbold 23: 1 Hale 34.

causes from such acts as are committed while under the influence of his disorder[1].

(3) A lunatic is one who is afflicted by his disorder only at certain periods and vicissitudes, having intervals of reason.

Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.

(4) As to persons who are drunk, see s. 85, *infra*.

1. **'At the time of doing it.'**—It must clearly be proved that at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the *nature and quality* of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong[3]. If he did know it he is responsible[4]. A plea of insanity at the time of trial will not avail the accused[5].

2. **'Unsoundness of mind.'** Whether the want of capacity is temporary or permanent, natural or supervening, whether it arises from disease, or exists from the time of birth, it is included in this expression.

It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility[6].

Partial delusion. Whether a person who, under an insane delusion as to the existing facts, commits an offence in consequence thereof is to be therefore excused depends upon the nature of the delusion. If he labours under partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts, with respect to which the delusion exists, were real[7]. If a person afflicted with insane delusion in respect of one or more particular subject or persons commits crime knowing that he was acting contrary to law but did the act complained of with a view, under the influence of insane delusion of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed[8].

Insanity brought on by drunkenness. Drunkenness is no excuse, but *delirium tremens* caused by drinking, and differing from drunkenness, if it produces such a degree of madness, even for a time, as to render a person incapable of distinguishing right from wrong, relieves him from criminal responsibility[9]. If habitual drunkenness has created fixed insanity, whether permanent or intermittent, it is the same as if insanity had been produced by any other cause and the act is excused[10].

3. **'Nature of the act or what is either wrong or contrary to law.'**—

[1] Hale P. C. 30.

[2] Russell 120; 1 Hale P. C. 31.

[3] Third question and answer in *McNaughten's case*, (1843) 4 St. Tr. (N. S.) 847.

[4] *Harka*, (1906) 26 A. W. N. 193.

[5] *Nota Ram*, (1866) P.R. No. 56 of 1866.

[6] *Kader Nasyer Shah*, (1896) 23 Cal. 604, 607.

[7] Fourth question and answer in *McNaughten's case*, sup.; *[illegible] Pramanik*, (1901) 28 Cal. 613.

[8] First question and answer in *McNaughten's case*, sup.

[9] *Davis*, (1881) 14 Cox 563.

[10] *Bhelka Aham*, (1902) 29 Cal. 493.

the accused were conscious that the act was done which he ought not to do, and if the act was at the same time contrary to the law of the land, he is punishable. His liability will not be diminished if he did the act complained of with a view *under the influence of insane delusion* of re-dressing or revenging some supposed grievance or injury, or of producing some public benefit, if he knew that he was acting contrary to law[1].

CASES.

Homicide by a person suffering from fever.—Where an accused, who was suffering from fever which caused him while suffering from its paroxysms to be bewildered and unconscious, killed his children at being annoyed at their crying, but he was not delirious then, and there was no evidence to show that he was not conscious of the nature of his act, it was held that he would not be entitled to protection under this section[2].

Homicide by a 'ganja' smoker.—The accused, an habitual *ganja* smoker, killed his wife and children, because she quarrelled with him and objected to go to a village where he proposed to go. It was held that until the accused's habit of smoking *ganja* had induced in him such a diseased state of mind as to make him incapable of knowing the nature of his act or criminality, this section did not apply in his favour[3].

Act of a person incapable of judgment by reason of intoxication caused against his will.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

COMMENT.

Under this section a person will be exonerated from liability for doing an act while in a state of intoxication if he, *at the time* of doing it, by reason of intoxication, was

(1) incapable of knowing the nature of the act, or

(2) that he was doing what was either wrong or contrary to law:

Provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Voluntary drunkenness is no excuse for the commission of a crime[4]. At the same time drunkenness does not, in the eye of the law, make an offence the more heinous[5]. It is a species of madness for which the madman is to blame. The law pronounces that the obscuration and divestment of that judgment and human feeling which in a sober state would have prevented the

1 *McNaughten's case*, (1843) 4 St. Tr. (N. S.) 847

2 *Lakshman Dagdu*, (1886) 10 Bom. 512.

3 *Sakharam valad Ramji*, (1890) 14 Bom. 564.

4 *Bodhee Khan*, (1866) 5 W. R. 79.

5 *Zoolfkar Khan*, (1871) 16 W. R. 36.

accused from offending, shall not, when produced by his voluntary act, screen him from punishment, although he be no longer capable of self-restraint[1].

Under this section if a man is made drunk through stratagem or the fraud of others, or through ignorance, or through any other means causing intoxication without the man's knowledge or against his will, he is excused[2].

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

COMMENT.

As certain guilty knowledge or intention forms part of the definition of many offences, this section is provided to meet those cases. It says that a person voluntarily drunk will be deemed to have the same knowledge as he would have had if he had not been intoxicated. Thus this section attributes to a drunken man the knowledge of a sober man when judging of his action but does not give him the same intention. This knowledge is the result of a legal fiction and constructive intention cannot invariably be raised[3].

Act not intended and not known to be likely to cause death or grievous hurt done by consent.

87. Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

ILLUSTRATION.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing airly, hurts Z, A commits no offence.

[1] 7th Parl. Rep. s. 19.
[2] 1 Hale 32.
[3] *Pal Singh*, (1917) P. R. No. 28 of 1917.

COMMENT.

This section protects a person who causes injury to another person above eighteen years of age who has given his consent by doing an act not intended and not known to be likely to cause death or grievous hurt. It appears to proceed upon the maxim *volenti non fit injuria*. He who consents suffers no injury. This rule is founded upon two very simple propositions: (1) that every person is the best judge of his own interest: (2) that no man will consent to what he thinks hurtful to himself.

Every man is free to inflict any suffering or damage he chooses on his own person and property; and if instead of doing this himself, he consents to its being done by another, the doer commits no offence. A man may give away his property, and so another who takes it by his permission does not commit theft. He may inflict self-torture or he may consent to suffer torture at the hands of another.

The section does not permit a man to give his consent to anything intended or known to be likely to cause his own death or grievous hurt.

Manly sports and exercises.—Ordinary games such as fencing, single sticks, boxing, football, and the like, are protected by this section. The true principle which distinguishes such cases from those where death ensues in consequence of an intent to do a slight injury is, that here bodily harm is not the motive on either side. But proper caution and perfect fair play should be used on both sides. A prize-fight is illegal, and all persons aiding and abetting therein are guilty of assault, and the consent of the persons actually engaged in fighting to the interchange of blows does not afford any answer to the criminal charge of assault[1].

Act not intended to cause death done by consent in good faith for person's benefit.

88. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent whether express or implied, to suffer that harm, or to take the risk of that harm.

ILLUSTRATION.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

COMMENT.

The preceding section allowed any harm to be inflicted short of death or grievous hurt. This section sanctions the infliction of any harm if it is for the benefit of the person to whom it is caused. No consent can justify an

[1] *Coney*, (1882) 8 Q. B. D. 534.

intentional causing of death. But a person for whose benefit a thing is done may consent that another shall do that thing, even if death may probably ensue.) If a person gives his free and intelligent consent to take the risk of an operation which, in a large proportion of cases, has proved fatal, the surgeon who operates cannot be punished even if death ensues. Similarly, if a person attacked by a wild beast should call out to his friends to fire, though with imminent hazard to himself, and they were to obey the call, we do not conceive that it would be expedient to punish them, though they might by firing cause his death, and though when they fired, they knew themselves to be likely to cause his death.

This section differs from the last section in two particulars—(1) under it any harm except death may be inflicted; (2) the age of the person consenting is not mentioned (but see s. 90 under which the age of the consenting party must at least be twelve years).

Persons not qualified as medical practitioners cannot claim the benefit of this section as they can hardly be deemed to act in 'good faith' as that expression is defined in s. 52.

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause, to that person:

Provisos.

Provided—

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.—That this exception shall not extend to the

abetment of any offence, to the committing of which offence it would not extend.

ILLUSTRATION.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

COMMENT.

This section empowers the guardian of an infant under twelve years or an insane person to consent to the infliction of harm to the infant or the insane person, provided it is done in good faith and is done for his benefit. Persons above twelve years are considered to be capable of giving consent under s. 88. The consent of the guardian of a sufferer, who is an infant or who is of unsound mind, shall have the same effect which the consent of the sufferer himself would have, if the sufferer were of ripe age and sound mind.

Consent known to be given under fear of misconception.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact,[1] and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception ; or

Consent of insane person.

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent ; or

Consent of child.

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

COMMENT.

This section does not define 'consent' but describes what is not consent. This section says that a consent is not a true consent if it is given—

(1) by a person under fear of injury ;

(2) by a person under a misconception of fact ;

and the person obtaining the consent *knows* or has *reason* to believe this

(3) by a person of unsound mind;

(4) by a person who is intoxicated;

and who is unable to understand the nature and consequence of that to which he gives his consent.

(5) by a person under twelve years of age.

Consent is an act of reason, accompanied with deliberation, the mind weighing as in balance, the good and evil on each side[1]. Consent means an active will in the mind of a person to permit the doing of a the act complained of, and knowledge of what is to be done, or of the nature of the act that is being done, is essential to a consent to an act[2].

There is a difference between consent and submission; every consent involves a submission; but it by no means follows that a mere *submission* involves *consent*[3]. Mere submission by one who does not know the nature of the act done cannot be consent[4].

1. **'Misconception of fact.'**—Consent given under a misconception is invalid, if the person to whom the consent is given is aware of its existence. A consent given on a misrepresentation of a fact is one given under a misconception of fact within the meaning of this section. An honest misconception by both the parties, however, does not invalidate the consent. For instance, where a man of full age submitted himself to emasculation, performed neither by a skilful hand, nor in the least dangerous way, and died from the injury, the persons concerned in the act were held guilty of culpable homicide and not murder[5]. The accused, who professed to be snakecharmers, persuaded the deceased to allow themselves to be bitten by a poisonous snake, inducing them to believe that they had power to protect them from harm. It was held that the consent given by the deceased allowing themselves to be bitten did not protect the accused, such consent having been founded on a misconception of fact, that is, in the belief that the accused has power by charms to cure snake bites, and the accused knowing that the consent was given in consequence of such misconception[6].

Exclusion of acts which are offences independently of harm caused.

91. The exceptions in sections 87 and 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

ILLUSTRATION.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an

1 Story, s. 222.
2 *Lock*, (1872) L.R. 2 C.C.R. 10, 11.
3 *Day*, (1841) 9 C. & P. 722, 724.
4 *Lock*, sup. p. 14.
5 *Baboolun Hijrah*, (1866) 5 W. R. 7.
6 *Poonai Fattemah*, (1869) 12 W. R. 7.

offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

COMMENT.

The section serves as a corollary to ss. 87, 88 and 89. It says in explicit terms that consent will only condone the act causing harm to the person giving the consent which will otherwise be an offence. Acts which are offences independently of any harm which they may cause will not be covered by consent given under ss. 87, 88 and 89, *e. g.*, causing miscarriage, public nuisance, offences against public safety, morals, etc.

Act done in good faith for benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit :

Provisos.

Provided—

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death.

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity.

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, or any purpose other than the preventing of death or hurt :

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

ILLUSTRATIONS.

(*a*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b*) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith

intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

COMMENT.

This section is designed to meet those cases which do not come either under s. 88 or s. 89. The principal object of ss. 88, 89 and 92 is protection of medical practitioners. Illustrations (*a*) and (*b*) exemplify cases in which it is impossible to give consent; illustrations (*c*) and (*d*), where legal capacity to consent is wanting.

The first Law Commissioners observe: "There yet remains a kindred class of cases which are by no means of rare occurrence. For example, a person falls down in an apoplectic fit. Bleeding alone can save him, and he is unable to signify his consent to be bled. The surgeon who bleeds him commits an act falling under the definition of an offence. The surgeon is not the patient's guardian, and has no authority from any such guardian; yet it is evident that the surgeon ought not to be punished. Again, a house is on fire. A person snatches up a child too young to understand the danger, and flings it from the house-top, with a faint hope that it may be caught in a blanket below, but with the knowledge that it is highly probable that it will be dashed to pieces. Here, though the child may be killed by the fall, though the person who threw it down knew that it would very probably be killed, and though he was not the child's parent or guardian, he ought not to be punished.

"In these examples there is what may be called a temporary guardianship justified by the exigency of the case and by the humanity of the motive. This temporary guardianship bears a considerable analogy to that temporary magistracy with which the law invests every person who is present when a great crime is committed, or when the public peace is concerned. To acts done in the exercise of this temporary guardianship, we extend...a protection very similar to that which we have given to the acts of regular guardians[1]."

This section speaks of 'hurt,' whereas s. 89 speaks of 'grievous hurt,' otherwise the terminology of both the sections is almost identical.

[1] Note B.

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

COMMENT.

This section protects the innocent without unduly cloaking the guilty.

The communication under this section must be

(1) made in good faith; and

(2) for the benefit of the person to whom it is made.

The illustration to this section does not say, however, whether the communication was made to the patient for his benefit.

Act to which a person is compelled by threats.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

COMMENT.

By this section a person is excused from the consequences of any act, except (1) murder, and (2) offences against the State punishable with death, done under fear of instant death; but fear of hurt or even of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

English law.—The English law excuses a person who has been forced to commit an offence by fear of death or of grievous bodily harm, except in cases of treason or homicide. The fear of having houses burnt or goods spoiled is no excuse in the eye of the law for joining and marching with rebels[1]. He is also excused, under certain conditions, if he is forced to levy war against the King or to adhere to the King's enemies, provided he uses every reasonable endeavour to resist or escape[2]. Under the English law a married woman charged with the commission of any criminal act, except treason, homicide, and probably robbery, is, in case her husband shall be present at the time of the commission of such act, presumed to have acted under this coercion, and such coercion excuses the act, unless it appears that she did not so act. There is no provision in favour of the wife under such circumstances in the Penal Code.

Doctrine of compulsion and necessity.- No one can plead the excuse of necessity or compulsion as a defence of an act otherwise penal, except as provided in this section. No man from a fear of consequences to himself has a right to make himself a party to committing mischief on mankind[3].

Except where unsoundness of mind is proved or real fear of instant death is proved the burden being on the prisoner, pressure of temptation is not an excuse for breaking the law[4].

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

COMMENT.

The maxim *de minimis non curat lex* (the law takes no account of trifles) is the foundation of this section. The First Law Commissioners observe: "The section is intended to provide for those cases which, though, from the imperfections of language, they fall within the letter of the penal law, or yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past

[1] *McGrowther's case*, (1746) Foster 13.
[2] 7th Parl. Rep. 73.
[3] *Tyler*, (1838) 8 C. & P. 616, 620; *Maganlal*, (1889) 14 Bom. 115.
[4] *Devji Govindji*, (1895) 20 Bom. 215, 222, 223.

him, hurt to incommode him by pressing against him in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crimes. That these acts ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the Judges to except them in practice[1]."

CASES.

Acts regarded as trivial. This section was held applicable where a person was convicted for taking pods, almost valueless, from a tree standing on Government waste land[2], and where the plaintiff complained of the harm caused to his reputation by the imputation that he was travelling with a wrong ticket[3].

Acts not regarded as trivial. Where a blow was given across the chest with an umbrella, by a dismissed police man to a District Superintendent of Police because his application to reconsider his case had been rejected[4]; where the accused tore up a paper which showed a money debt due from him to the prosecutor, though it was unstamped, and therefore not a legal security[5]; and where a respectable man was taken by the ear[6], this section was held not to apply.

OF THE RIGHT OF PRIVATE DEFENCE

Things done in private defence.

96 Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in s. 99 to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

1 Note B.

2 *Kasya bin Ranji*, (1868) 5 B. H. C. (Cr. C.) 35.

3 *South Indian Railway Co.* v. *Ramakrishna*, (1889) 13 Mad. 34.

4 *Govt. of Bengal* v. *Sheo Gholam Lalla*, (1875) 24 W. R. 67.

5 *Ramasami*, (1888) 12 Mad 148.

6 *Shoshi Bhusan Mukerjee* v. *Walmsley*, (1897) 1 C. W. N. cxxxiv.

COMMENT.

This section specifies the extent to which the right of private defence can be exercised. Section 99 provides the limitations. These two sections combined together lay down the principles of the right of defence.

The accused must plead the right of defence. The Allahabad High Court has held that a Court cannot set up such a plea when the accused himself has not done so[1]. But the Madras High Court has ruled that even if the accused does not specifically plead private defence, he may be acquitted if the evidence showed that he was acting in self defence[2].

English law.—This section is much wider than the English law. Under it even a stranger may defend the person or property of another person whereas under the English law there must be some kind of relationship existing, such as that of master and servant, or husband and wife, or guardian and ward, before this right could be exercised on behalf of another.

CASES.

Defence of person.—Under circumstances which might have induced the belief that a man was cutting the throat of his wife, their son shot and killed his father. It was held that if the son had reasonable grounds for believing and honestly believed that his act was necessary for the defence of his mother, the homicide was excusable[3].

Defence of property.—Every person in possession of land is entitled to defend his possession against any one who tries to eject him by force[4]; or to steal from it[5]; or to do an act which will have the effect of causing injury to it, *e. g.*, cutting of a bund[6].

Right of private defence against the act of a person of unsound mind, etc.

98. When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

ILLUSTRATIONS.

(*a*) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right

1 *Gullu,* (1904) 24 A. W. N. 113.
2 *Verana Nadan,* [1902] 1 M. W. N. 404.
3 *Rose,* (1884) 15 Cox 540.
4 *Sachee,* (1867) 7 W. R. 112.
5 *Mokee,* (1869) 12 W. R. 15.
6 *Birjoo Singh* v. *Khub Lall* (1873) 19 W. R. 66.

of private defence against Z, which he would have if Z were not acting under that misconception.

COMMENT.

The right of defence would have lost most of its value if it was not allowed to be exercised against persons suffering from the incapacities mentioned in this section.

Acts against which there is no right of private defence

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

COMMENT.

This section indicates the limits within which the right of defence should be exercised.

First clause.—This clause applies to those cases in which the public servant is acting in good faith under colour of his office, though the particular act being done by him may not be justifiable by law[1]. If the act of a public servant is *ultra vires* the right of private defence may be exercised against him[2]. But the protection afforded under this section to public servants is not lost to them by reason of any mistake on their part in the exercise of their proper functions[3].

Second clause.—The first clause speaks of the acts done by a public servant, this clause, of acts done under the direction of a public servant. It is not necessary that the doer should be a public servant. Explanation 2 must be read conjointly with this clause.

Third clause.- The third clause of this section must be read with the first clause of s. 105[4]. It places an important restriction on the exercise of the right of defence.

The right of private defence being granted for defence only, it must not and cannot legally be exercised when there is *time to have recourse to the protection of public authorities*. The right of private defence does not take the place of the functions of those public servants who are especially charged with the protection of life and property and the apprehension of offenders, and where the assistance of the public authorities can be procured, the right cannot be lawfully exercised. But the law does not intend that a person must run away to have recourse to the protection of public authorities when he is attacked instead of defending himself[5].

Fourth clause.—The right of private defence is restricted to not inflicting more harm than it is necessary to inflict for the purpose of defence. The amount of force necessary depends on the circumstances of the case, and there is no protection if the harm is caused by excessive violence quite unnecessary to the case[6]. For example, a person set by his master to watch a garden or yard is not at all justified in shooting at, or injuring in any way, persons who may come into those premises, even in the night. He ought first to see whether he could not take measures for their apprehension[7]. The measure of self-defence must always be proportionate to the *quantum* of force used by the attacker and which it is necessary to repel[8].

CASES.

First clause.—Resistance to an officer acting without a warrant.—A Police officer attempted without a search-warrant to enter a house in search of property alleged to have been stolen and was obstructed and resist-

[1] *Dalip*, (1896) 18 All. 246, 252.
[2] *Jogendra Nath Mukerjee*, (1897) 24 Cal. 320; *Tulsiram*, (1888) 13 Bom. 168.
[3] *Tiruchittambala Pathan*, (1896) 21 Mad. 78.
[4] *Narsang Pathabhai*, (1890) 14 Bom. 441.
[5] *Alingal Kunhinayan*, (1905) 28 Mad. 454.
[6] *Gokool Bowree*, (1866) 5 W. R. 33.
[7] *John Scully*, (1824) 1 C. & P. 319.
[8] *Ram Prasad Mahton*, (1919) 4 P. L. J. 289.

ed. It was held that, even though the officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that the officer was acting otherwise than in good faith and without malice[1].

Illegal attachment does not justify resistance.—Where articles protected from attachment were attached, it was held that this act did not justify resistance[2]. Where the property of a person was wrongfully attached as the property of certain absconders, it was held that the rightful owner had no right of private defence of his property, as the Police officer was acting in good faith under colour of his office, and that even supposing the order of attachment might not have been properly made, that would in itself be no sufficient ground for such a defence[3].

Second clause.—Resistance to the execution of a warrant.—Where a Police officer attempted to execute a warrant the issue of which was illegal, it was held that the accused were justified in their resistance[4].

Third clause.—Time to obtain protection of public authorities.—The accused received information one evening that the complainants intended to go on his land on the following day, and uproot the corn sown in it. At about three o'clock next morning he was informed that the complainants had entered on his land and were ploughing up the corn. Thereupon he at once proceeded to the spot, followed by the remaining accused, and remonstrated with the complainants, who commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. It was held that the complainants being the aggressors, the accused had the right of private defence; and that they were not bound to act on the information received on the previous evening and seek the protection of the public authorities, as they had no reason to apprehend a night attack on their property[5].

Fourth clause.—Justifiable harm.—Where the accused, finding a thief entering his house at night, through an entrance made in the side-wall seized him while intruding his body and held him with his face down to the ground to prevent his further entrance and thereby caused his death by suffocation[6]; where a person attacked by another with a spear struck a blow with a club which resulted in the death of the party attacking[7]; and where a boy found a person stealing his property and killed him but not intending to do so[8], the right of private defence was held to be a good justification.

More harm caused than necessary.—Where a person killed a weak old woman found stealing at night[9]; where a person caught a thief in his house at night and deliberately killed him with a pick-axe to prevent his

1 *Puket Kotu*, (1896) 19 Mad. 349.
2 *Poomalai Udayan*, (1898) 21 Mad. 296.
3 *Bhai Lal Chowdhry*, (1902) 29 Cal. 417.
4 *Jogendra Nath Mukerjee*, (1897) 24 Cal. 320.
5 *Narsang Pathabhai*, (1890) 14 Bom. 441; *Pachkauri*, (1897) 24 Cal. 686.
6 *Kurrim Bux*, (1865) [illegible] R. 12.
7 *Moinudin*, (1869) 11 W. R. 41.
8 *Mokee*, (1869) 12 W. R. 15.
9 *Gokool Bowree*, (1866) 5 W. R. 33.

escaping[1]; and where a number of persons apprehending a thief committing housebreaking strangled him and subjected him to gross mal treatment when he was fully in their power[2], the right of private defence was negatived

English case.—A parker finding a boy stealing wood in his master's ground bound him to his horse's tail, and beat him The horse took fright and ran away, and dragged the boy on the ground till his shoulder was broken, whereof he died This was ruled to be murder[3]

When the right of private defence of the body extends to causing death

100. The right of private defence of the body extends under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely —

First —Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault,

Secondly —Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault,

Thirdly —An assault with the intention of committing rape,

Fourthly—An assault with the intention of gratifying unnatural lust,

Fifthly —An assault with the intention of kidnapping or abducting,

Sixthly —An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

COMMENT.

The law authorises a man who is under a reasonable apprehension that his life is in danger or his body in risk of grievous hurt to inflict death upon his assailant either when the assault is attempted or directly threatened, but the apprehension must be reasonable and the violence inflicted must not be greater than is reasonably necessary for the purpose of self-defence It must be proportionate and commensurate with the quality and character of the act it is intended to meet and what is done in excess is not protected.

1 *Durwan Geer*, (1866) 5 W. R 73.
2 *Dhununjai Poly*, (1870) 14 W.R.68.
3 *Halloway*, (1628) 1 East P. C. 237.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

When such right extends to causing any harm other than death.

COMMENT.

Any harm short of death can be inflicted in exercising the right of private defence in any case which does not fall within the provisions of s. 100.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

Commencement and continuance of the right of private defence of the body.

COMMENT.

This section indicates when the right of private defence of the body commences and till what time it continues. It commences and continues as long as danger to body lasts.

The extent to which the exercise of the right will be justified will depend not on the actual danger but on whether there was reasonable apprehension of such danger. There must be an attempt or threat, and consequent thereon an apprehension of danger; but it is not a mere idle threat, or every apprehension of a rash or timid mind, that will justify the exercise of the right. Reasonable ground for the apprehension is requisite. Suppose the threat to proceed from a woman or child and to be addressed to a strong man, in such a case there could hardly be a reasonable apprehension. Present and imminent danger seems to be meant[1].

The law does not require that a person should not exercise his right of self-defence if by running away he can avoid injury from his assailant.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence the committing of which, or the attempting to commit which, occasions the exercise of

When the right of private defence of property extends to causing death.

[1] M. & M. 78.

the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

First.—Robbery :

Secondly.—House-breaking by night ;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property ;

Fourthly.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

COMMENT.

Section 100 enumerates the cases in which the right of private defence of the body extends to the causing of death, this section enumerates the cases in which it extends to the causing of death in defence of property.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

COMMENT.

Sections 101 and 104 restrict the right of private defence in certain cases to voluntary causing hurt or grievous hurt. Section 101 is a corollary to s. 100 and this section to s. 103.

Commencement and continuance of the right of private defence of property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

COMMENT.

This section indicates when the right of defence of property commences and till what period it continues. It is similar to s. 102.

First clause.—The right of private defence of property commences when a reasonable apprehension of danger to property commences. Before such apprehension commences the owner of the property is not called upon to apply for protection to the public authorities.

Second clause.—The right of private defence of property against theft continues till (1) the offender has effected his retreat with the property, or (2) the assistance of public authorities is obtained, or (3) the property has been recovered.

An offender is to be considered as having effected his retreat when he has once got off having escaped immediate pursuit or pursuit not having been made.

A re-capture of the plundered property, while it is in course of being carried away is authorised, for the taking and retaking is one transaction. But when the offence has been committed and the property removed, a re-capture after an interval of time by the owner or by other persons on his behalf, however justifiable, cannot be deemed an exercise of the right of defence of property. The recovery which the section contemplates seems to be a recovery either immediate or made before the offender has reached his final retreat[1].

Fourth clause.--In the case of criminal trespass and mischief the right of private defence ceases to exist as soon as the commission of these offences ceases.

Fifth clause.—The right of private defence against house-breaking continues only so long as the house-trespass continues, hence where a person followed a thief and killed him in the open, after the house trespass had ceased, it was held that he could not plead the right of private defence[2].

[1] M. & M. 81. R. 9.
[2] *Balakee Jolahed*, (1868) 10 W.

Right of private defence against deadly assault when there is risk of harm to innocent person.

106. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

ILLUSTRATION.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

COMMENT.

This section should be read in the light of s. 100. Injury to innocent persons in the exercise of the right of defence is excusable under it.

CHAPTER V.

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing: or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

ILLUSTRATION.

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to

facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

COMMENT.

When an offence is committed and several persons take part in the commission of it, each person may contribute in a manner and degree different from the others to the doing of the criminal act.

The act may be done by the hands of one person while another is present, or is close at hand ready to afford help; or the actual doer may be a guilty agent acting under the orders of an absent person: and besides these participators there may be other persons who contribute less directly to the commission of the offence by advice, persuasion, incitement, or aid. It is proper to mark the nature and degree of participation which is essential to criminal liability, but it will be seen that the several gradations of action above referred to are not always treated as denoting necessarily different measures of guilt with a view to distinctions in respect of punishment[1].

Abetment is constituted by—

(1) instigating a person to commit an offence; or

(2) engaging in a conspiracy to commit it; or

(3) intentionally aiding a person to commit it.

(1) Abetment by instigation.—1st clause.—A person is said to 'instigate' another to an act, when he actively suggests or stimulates him to the act, by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation, or encouragements[2]. Instigation may be of an unknown person[3]. A mere acquiescence or permission does not amount to an instigation.

Explanation 1 to this section says that a person who (1) by wilful misrepresentation, or (2) by wilful concealment of a material fact which he is bound to disclose voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. The illustration is an example of instigation by 'wilful misrepresentation.' Instigation by 'wilful concealment' is where some duty exists which obliges a person to disclose a fact.

(2) Abetment by conspiracy.—2nd clause.—'Conspiracy' consists in a combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means, and the conspiracy is complete, if two or more than two should agree to do an illegal thing. So long as such a design rests in intention only, it is not indictable[4]. Conspiracy is not a substantive offence in India, but is incorporated in the law of abetment of offences.

It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed[5]. Where parties concert to-

1 M. & M. 83.

2 1 Russ. 164.

3 *Ganesh Damodar Savarkar*, (1909) 12 Bom. L. R. 105.

4 Per Willes, J., in *Mulcahy*, (1868) L. R. 3 H. L. 306, 317. See *Quinn* v. *Leathem*, [1901] A. C. 495, 528.

5 Expln. 5 to s. 108; *Kalil Munda*, (1901) 28 Cal. 797.

gether, and have a common object, the act of one of the parties, done in furtherance of the common object and in pursuance of the concerted plan, is the act of all[1].

Before the introduction of Chapter V-A, conspiracy, except in cases provided for by ss. 121-A, 311, 400, 401 and 402 of the Code, was a mere species of abetment where an act or an illegal omission took place in pursuance of that conspiracy, and amounted to a distinct offence for each distinct offence abetted by conspiracy[2].

Conspiracy to commit various acts amounting to distinct offences—On this point the Madras High Court is not unanimous in its opinion. Three Judges hold that a conspiracy to commit various acts which are in themselves distinct offences is itself one offence under the Indian Penal Code and not several abetments of those distinct offences[3]. The other three hold that conspiracy is a mere species of abetment when an act or illegal omission takes place in pursuance of the conspiracy and amounts to a distinct offence for each distinct offence abetted by conspiracy[4].

(3) **Abetment by aid—3rd clause—By an act.**—A person abets by aiding, when by act done either prior to, or at the time of, the commission of an act, he intends to facilitate, and does in fact facilitate, the commission thereof (*vide* Expln. 2). For instance, the supplying of necessary food to a person known to be engaged in crime is not *per se* criminal: but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime, or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the commission of the crime and might facilitate it[5]. Mere presence at the commission of a crime cannot amount to intentional aid unless it was intended to have that effect. To be present and aware that an offence is about to be committed does not constitute abetment unless the person thus present holds some position of rank or influence such that his countenancing what takes place may, under the circumstances, be held a direct encouragement, or unless some specific duty of prevention rests on him, which he leaves unfulfilled, in such wise that he may be safely taken as having joined in a conspiracy for the perpetration of the offence[6].

By illegal omission.—To prove abetment by 'illegal omission,' it is necessary to show that the accused intentionally aided the commission of the offence by his non-interference[7], and the omission involved a breach of a legal obligation[8].

Attempt.—The abetment of an offence within the meaning of s. 40 being itself an offence punishable under this chapter, an attempt to commit

1 *Ameer Khan*, (1871) 17 W. R. 15.
2 *Tirumal Reddi*, (1901) 24 Mad. 523.
3 Per Sir Arnold White, C. J., Shephard and Boddam, JJ., (1900) 1 Weir 47.
4 Per Davies, Benson and Moore, JJ., in *ibid.*
5 *Lingam Ramanna*, (1880) 2 Mad. 137.
6 *Lakshmi*, (1886) Cr. R. No. 51 of 1886, Unrep. Cr. C. 303.
7 *Khajuh Noorul Hossein* v. *Fabre Tonnerre*, (1875) 24 W. R. 26.
8 *Cooverji*, (1906) 9 Bom. L. R. 159, 161 ; *Khadim Sheikh*, (1869) 4 B. L.R. (A. Cr. J.) 7.

the offence of abetment is provided for in s. 511, and there is, therefore, no legal obstacle to punishing such offence[1].

English law.—According to English law criminals are divided into four classes. The distinction is based on the consideration whether a party was present or absent at the commission of the offence.

(1). *Principal in the first degree.*—One who is the actual perpetrator of the crime. It is not necessary that he should be actually present when the offence is committed, thus one who lays poison or a trap for another is a principal in the first degree. Nor need the deed be done by the principal's own hands; for it will suffice if it is done through an innocent agent, as for instance, if one incites a child or a madman to murder. Even an animal may be employed as an innocent agent. For example, a person who sets a dog upon people is himself guilty of assaulting them.

(2). *Principal in the second degree.*—One by whom the actual perpetrator of the crime is aided and abetted at the very time when it is committed. He may or may not be actually present at the scene of the crime. It will suffice if he has the intention of giving assistance, and is sufficiently near to give the assistance; as when one is watching outside, while others are committing a felony inside the house or seconds in a prize fight which ends fatally. An aider or abettor is only liable for such crimes committed by the principal in the first degree as were done in execution of their *common* purpose.

Both the above classes of principals are liable to the same punishment.

(3). *Accessory before the fact.*—One who, being absent at the time when the felony is committed, yet procures, counsels, commands, or abets another to commit a felony. He is punishable in all respects as the principal felon. If present at the commission he would be a principal.

(4). *Accessory after the fact.*—One who, knowing a felony to have been committed by another, receives, relieves, comforts, assists, harbours, or maintains the felon.

A felony must be actually committed or there cannot be any accessories.

Principals are dealt with in the Penal Code under ss. 34 to 38. There is no distinction of 'principals in the first degree' and 'principals in the second degree' in the Code.

Sections 109 and 114 of the Penal Code supersede the English law as to principals in the first and second degrees and accessories before the fact[2].

The offence of abetment corresponds as nearly as one word can be said to correspond to another to the offence which is known in England of being an 'accessory before the fact.' But mere concurrence—that kind of passive concurrence which is known in England as being an 'accessory after the fact'—is not abetment and is not to be treated as abetment.

'Accessory after the fact' is treated in scattered sections: see provisions relating to harbouring, ss. 212, 216; and also ss. 130, 136, 137, 410-414.

[1] *R. Spier*, (1887) P. R. No. 49 of 1887.

[2] *NirmalKanta Roy*,(1914) 41 Cal. 1072.

CASES.

(1) **Instigation—By master.**—Where, of several persons constituting an unlawful assembly, some only were armed with sticks, and A, one of them, was not so armed, but picked up a stick and used it, B (the master of A), who gave a general order to beat, was held guilty of abetting the assault made by them[1].

Instigation by letter.—Where one person instigates another to the commission of an offence by means of a letter sent through the post, the offence of abetment by instigation is completed as soon as the contents of such letter become known to the addressee[2]. If the letter never reaches him the act is only an attempt to abet[3].

(2) **Conspiracy.—Suicide.**—Where a woman prepared herself to commit suicide in the presence of the accused, and they followed her to the pyre and stood by her, her step-sons crying "Ram, Ram," and one of the accused admitted that he told the woman to say "Ram, Ram," and she would become *suttee*, it was held that this amounted to connivance and unequivocal countenance of the suicide by the accused[4].

Forgery.—Preparing in conjunction with others a copy of an intended false document, buying a stamped paper for the purpose of writing such false document, and asking for information as to a fact to be inserted in such false document, were held to support a conviction for abetment of forgery[5].

(3) **Aiding—By act—Presence at a bigamous marriage.**—A priest, who officiated at a bigamous marriage, was held to have intentionally aided it, but not the persons who were merely present at the celebration or who permitted its celebration in their house, when such permission afforded no particular facility for the act[6].

Acceptance of an unstamped receipt is not aiding.—Where a debtor paid a sum of money to his creditor, and asked for a stamped receipt for him, who had not at hand a stamp and then accepted an unstamped receipt saying he would affix a stamp thereto, which he did not do, it was held that this did not constitute abetment of the offence of giving an untamped receipt because he had done or omitted nothing which it was in his power to effect[7].

Act abetted is illegal but not an offence.—A guardian of a Mahomedan married female infant who, while her husband was living, caused a marriage ceremony to be gone through in her name, but in her absence and without her consent, with another man, was held not to have committed the offence of abetting the commission of an offence under s. 494[8]. Because, to constitute abetment the accused must be proved either to have instigated or aided some person to commit an offence.

By illegal omission.—Non-interference where there is duty to interfere.—

[1] *Rasookoollah*, (1869) 12 W. R. 51.
[2] *Sheo Dial Mal*, (1894) 16 All. 389.
[3] *Ransford*, (1874) 13 Cox 9.
[4] *Mohit Pandey*, (1871) 3 N. W. P. 316.
[5] *Padala Venkatasami*, (1881) 3 Mad. 4.
[6] *Umi*, (1882) 6 Bom. 126.
[7] *Mitthu Lal*, (1885) 8 All. 18; *Janki*, (1882) 7 Bom. 82.
[8] *Abdool Kurreem*, (1878) 4 Cal. 10.

Where a Head Constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, it was held that he was guilty of abetment[1]. But the mere fact that the offence of extortion was committed in the presence of a village police officer without eliciting any disapproval on his part was held not to render him liable as an abettor[2].

Abettor.

108. A person abets an offence who abets either the commisssion of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

ILLUSTRATIONS.

(*a*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

ILLUSTRATIONS.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A

[1] *Kali Churn Gangooly*, (1873) 21 W. R. 11.

[2] *Gopal Chunder Sirdar*, (1882) 8 Cal. 728.

is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

ILLUSTRATION.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

ILLUSTRATION.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

COMMENT.

Abetment under the Penal Code involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence, and it is of the essence of the crime of abetment that the abettor

should substantially assist the principal culprit towards the commission of the offence. Nowhere concurrence in the criminal acts of another without such participation therein as helps to effect the criminal act or purpose is punishable under the Code.

'Abettor', under this section, means the person who abets (1) the commission of an offence, or (2) the commission of an act which would be an offence if committed by a person not suffering from any physical or mental incapacity. In the light of the preceding section he must be an instigator or a conspirator or an intentional helper.

There must be abetment of the commission of an act. The section does not contemplate any acts of subsequent abetment. Thus a person cannot be convicted of abetment of a false charge solely on the ground of his having given evidence in support of such charge[1].

Explanation 1.—If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him then he abets the offence of which such public servant is guilty, although the abettor, being a private person, could not himself have been guilty of that offence.

Explanation 2.–The offence of abetment is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow. The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.

An offence can be abetted though the means which are intended to be employed are such that it is physically impossible that the effect requisite to constitute the offence should be caused by them[2]. In a Bombay case a doubt has been expressed whether abetment of murder by sorcery or other impossible means is an offence under the Code[3].

Explanation 3.—If a man does, by means of an innocent agent, an act which amounts to a crime, the employer, and not the agent, is guilty of the act[4]. Illustrations (*b*), (*c*) and (*d*) exemplify this explanation. R sold to D certain trees which, in fact and to the knowledge of R, though not to the knowledge of D, belonged to a third person. The trees were sold to D with the intention that they should be cut down and taken away. It was held that R had committed the offence of abetment of theft[5].

The offence of abetment depends upon the intention of the person who abets and not upon the knowledge or intention of the person he employs to act for him.

Explanation 4.—This explanation is to be read as follows: "When the abetment of an offence is an offence the abetment of such an abetment is also an offence." . The words "when the abetment of an offence is an offence" do not mean "when an abetment of an offence is actually committed," but that, when the abetment of an offence is by definition or description an

1 *Ram Panda*, (1872) 9 B. L. R. App. 16.

2 *Sahib Ditta*, (1885) P. R. No. 20 of 1885.

3 *Pestanji Dinsha*, (1873) 10 B.H. C. 75.

4 *Joan Bleasdale*, (1848) 2 C. & K. 765.

5 *Ram Charan*, (1896) 18 A. W. N. 147.

offence under the Penal Code, that is, when an abetment of an offence is punishable under s. 109 or s. 116 or other provision of the Code, then the abetment of such abetment is also an offence[1].

According to this explanation a person may make himself an abettor by intervention of a third person, without any direct communication between himself and the person employed to do the thing.

It is not necessary to an indictment for the offence of an abetment of an offence to show that such offence was actually committed. A sought the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. It was held that though the offence of theft was not committed yet A was liable for abetment of theft[2]. Where a prisoner asked a native doctor to supply her with medicine for the purpose of poisoning her son-in-law, it was held that the offence committed might be treated as an instigation of the doctor to abet the prisoner in the commission of the murder, and, with reference to this explanation, could be punished under ss. 116, 302[3].

Abetment is a substantive offence.—The offence of abetment is a substantive one and the conviction of an abettor is, therefore, in no way dependent on the convicition of the principal[4].

Principal cannot be abettor.—A person who has been convicted of an offence as principal cannot also be punished for abetting it[5].

Abetment in British India of offences outside it.

108 A. A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

ILLUSTRATION.

A, in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

COMMENT.

This section makes an abetment in British India by a British subject of an act committed in a foreign territory an offence punishable under the Penal Code if it would constitute an offence if committed in British India.

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

1 *Srilal Chamaria*, (1918) 46 Cal. 607.

2 *Troylukho Nath Chowdhry*, (1878) 4 Cal. 366.

3 *Musst. Bakhtawar*, (1882) P. R. No. 24 of 1882.

4 *Maruti Dada*, (1875) 1 Bom. 15

5 *Jeetoo Chowdry*, (1865) 4 W. R. 23.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

ILLUSTRATIONS.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(*b*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

COMMENT.

Under this section the abettor is liable to any punishment, which may be inflicted on the principal offender (1) if the act of the latter is committed in consequence of the abetment, and (2) no express provision is made in the Code for the punishment of such an abetment.

In order to abet under this section it is not necessary that the abettor must be absent[1].

Punishment of abetment if person abetted does act with different intention from that of abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

COMMENT.

This section provides that though the person abetted commits the offence with a different intention or knowledge yet the abettor will be punished with the punishment provided for the offence abetted. The liability of the person abetted is not affected by this section.

Explanation 3 to s. 108 should be read in connection with this section. See Illustration (*d*).

[1] *Nirmal Kanta Roy*, (1914) 41 Cal. 1072.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it :

Liability of abettor when one act abetted and different act done.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Proviso.

ILLUSTRATIONS.

(*a*) A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(*b*) A instigates B to burn Z's house B sets fire to the house and at the same time commits theft of property there A, though guilty of abetting the burning of the house, is not guilty of abetting the theft ; for the theft was a distinct act, and not a probable consequence of the burning.

(*c*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

COMMENT.

This section proceeds on the maxim "every man is presumed to intend the natural consequences of his act." If one man instigates another to perpetrate a particular crime, and that other, in pursuance of such instigation, not only perpetrates that crime, but, in the course of doing so, commits another crime in furtherance of it, the former is criminally responsible as an abettor in respect of such last mentioned crime, if it is one which, as a reasonable man he must, at the time of the instigation, have known would, in the ordinary course of things, probably have to be committed in order to carry out the original crime. B and C instigated A to rob the deceased on his return home for receiving a sum of money : whereupon A killed the deceased. A was convicted of murder and B and C of offences under ss. 109, 392[1].

[1] *Mathura Das*, (1884) 6 All. 491, 494.

Abettor when liable to cumulative punishment for act abetted and for act done.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

ILLUSTRATION.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offences of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

COMMENT.

This section extends the principle enunciated in the preceding section. Under it the abettor is punished for the offence abetted as well as the offence committed.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

ILLUSTRATION.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

COMMENT.

This section should be read in conjunction with s. 111. Section 111 provides for the doing of an act different from the one abetted whereas this section deals with the case when the act done is the same as the act abetted but its effect is different.

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abettor present when offence is committed.

COMMENT.

The meaning of this section is, that if the nature of the act done constitutes abetment, then, if present, the abettor is to be deemed to have committed the offence, though in point of fact another actually committed it. It simply provides for the punishment of what the English law calls 'principals in the second degree.' Where, for instance, a blow is struck by A, in the presence of and by the order of B, both are principals in the transaction. If two persons join in beating a man and he dies, it is not necessary to ascertain exactly what the effect of each blow was[1].

Sections 34 and 114.—According to s. 34 where a criminal act is done by several persons, each is liable as if it were done by himself alone : so that if two or more persons are present, aiding and abetting in the commission of a murder, each will be tried and convicted as a principal, though it might not be proved which of them actually committed the act. This section appears to refer to cases somewhat different, namely, where a person by abetment, previous to the commission of the act, renders himself liable as an abettor, is present when the act is committed, but takes no active part in the doing of it[2]. Section 34 has nothing to do with abetment.

Presence.—The mere presence as an abettor of any person will not render him liable for the offence committed[3]. He must be sufficiently near to give assistance[4], and there must be a participation in the act. It is not necessary that the party should be actually present, an ear or eye-witness of the transaction ; he is, in construction of law, present, aiding and abetting, if, with the intention of giving assistance, he be near enough to afford it, should occasion arise. A conspirator, who, while his friends entered into a house and looted it, stood and watched outside in pursuance of the common design, was held not to escape liability under the section[5].

Presence during the whole of the transaction is not necessary. For instance, if several persons combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals.[6]

If an abettor of an offence is, on account of his presence at its commis-

[1] *Mohamed Asger*, (1874) 23 W. R. 11.

[2] *Jan Mahomed*, (1864) 1 W.R. 49.

[3] *Abhi Misser* v. *Lachmi Narain*, (1900) 27 Cal. 566 ; *Deodhar Singh*, (1899) 27 Cal. 144.

[4] *William Stewart*, (1818) R. & R. 363.

[5] *Khandu Vishnu Sathe*, (1899) 1 Bom. L. R. 351, 355.

[6] *John Bingley*, (1821) R. & R. 446.

sion, to be charged under s. 114 as a principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence cannot be held to have been committed with his continuing abetment[1].

Abetment of offence punishable with death or transportation for life—if offence not committed,

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if act causing harm be done in consequence.

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

ILLUSTRATION.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

COMMENT.

This section punishes the abetment of certain offences which are either not committed at all, or not committed in consequence of abetment or only in part committed.

Abetment of offence punishable with imprisonment —if offence be not committed;

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that

[1] *Amrita Govinda*, (1873) 10 B. H. C. 497.

offence, or with such fine as is provided for that offence, or with both;

if abettor or person abetted be a public servant whose duty it is to prevent offence.

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

ILLUSTRATIONS.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(*b*) A intigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c*) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

COMMENT.

This section provides for the abetment of an offence punishable with imprisonment. There is no provision in the Code for punishing abetment of an offence punishable with fine only.

Three different states of fact may arise after an abetment—

(1) No offence may be committed. In this case the offender is punishable under ss. 115 and 116 for the mere attempt to cause crime.

(2) The very act at which the abetment aims may be committed, and will be punishable under ss. 109 and 110.

(3) Some act different, but naturally flowing from the act abetted, may be perpetrated, in which case the instigator will fall under the penalties of ss. 111, 112 and 113.

CASES.

A person who *pays* a gratification to a public servant, who does not himself commit an offence under s. 161, is guilty of an offence under ss. 116 and 161. If he only *offers* to pay such gratification he is punishable under ss. 116, 161 and 511[1].

[1] *Ahad Shah*, (1917) P. R. No. 18 of 1918.

Where S instigated a bench clerk in the Court of M, a Presidency Magistrate, to instigate the latter to accept an illegal gratification for acquitting an accused in a case pending before him and granting sanction against the complainant in the case, and K received such gratification as a police spy, and intending to get S arrested, and did not in fact instigate M to accept the same, it was held that S was guilty of the abetment of bribery under S 161 read with this section[1].

Abetting commission of offence by the public or more than ten persons.

117. Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

ILLUSTRATION.

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

COMMENT

Under this section it will be sufficient to shew any instigation or other mode of abetment, though neither the effect intended, nor any other effect follows from it.

Concealing design to commit offence punishable with death or transportation for life—

118. Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or transportation for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed;

if offence be not committed.

shall, if that offence be committed be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years: and in either case shall also be liable to fine.

[1] *Srilal Chamaria*, (1918) 46 Cal. 607.

ILLUSTRATION.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

COMMENT.

Sections 118, 119 and 120, all contemplate the concealment of a design by persons other than the accused to commit the offence charged. These sections apply to the concealment of all offences except those which are merely punishable with fine. Under s. 107 concealment of a design to commit an offence constitutes an abetment. There must be an obligation on the person concealing the offence to disclose it. The Code of Criminal Procedure creates such obligation in respect of several offences of a serious nature. The concealment to be criminal must be intentional or at least with knowledge that it will facilitate the commission of an offence.

Public servant concealing design to commit offence which it is his duty to prevent—

119. Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed;

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

if offence be punishable with death, etc.;

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;

if offence be not committed.

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the

longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

ILLUSTRATION.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

COMMENT.

Section 118 dealt with persons who were not public servants. In this section the same principle is extended to public servants but with severe penalty.

Concealing design to commit offence punishable with imprisonment—

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

if offence be committed;

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

if offence be not committed.

COMMENT.

The basic principle of this section and s. 118 is one and the same. Section 118 dealt with offences punishable with death or transportation for life; this section deals with offences punishable with imprisonment. All offences except those punishable with fine are included in these two sections.

CHAPTER V-A.

CRIMINAL CONSPIRACY.

120-A. When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

Definition of criminal conspiracy.

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

COMMENT.

This Chapter has introduced into the criminal law of India a new offence, namely, the offence of criminal conspiracy.

To constitute a criminal conspiracy there must be an agreement of two or more persons, to do an act which is illegal or which is to be done by illegal means. The object in view or the methods employed should be illegal, as defined in s. 43, supra. A distinction is drawn between an agreement to commit an offence and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the case of the former, the criminal conspiracy is completed by the act of agreement ; in the case of the latter, there must be some act done by one or more of the parties to the agreement to effect the object thereof, that is, there must be an overt act.

A person may be guilty of criminal conspiracy even though the illegal act, which he has agreed to do, has not been done, for the crime of conspiracy consists only in the agreement or confederacy to do an illegal act by legal means or a legal act by illegal means[1].

120-B. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Punishment of criminal conspiracy.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either

[1] *Amrita Lal Hazra*, (1915) 42 Cal. 957.

description for a term not exceeding six months, or with fine or with both.

COMMENT.

Under this section the punishment for a criminal conspiracy is more severe if the agreement is one to commit a serious offence; it is less severe if the agreement is to commit an act which, although illegal, is not an offence.

The punishment awardable under this section varies according as the offence has or has not been committed in consequence of the conspiracy. If an offence has been committed, the punishment is that provided by s. 109 of the Penal Code, though, strictly speaking, there should not be a conviction in such cases of conspiracy but of abetment. If it has not been committed, the punishment is governed by s. 116 of the Penal Code[1].

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

In this Chapter the offences against the State fall into the following groups:—

I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage, war against the King-Emperor (ss. 121,121-A, 122,123).

II. Assaulting Governor-General, or Governor, or Lieutenant-Governor or a Member of Executive Council with intent to compel or restrain the exercise of any lawful power (s. 124).

III. Sedition (124-A).

IV. War against a power at peace with the King-Emperor (s. 125) or committing depredations on the territories of such power (ss. 125-126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (ss. 128, 129, 130).

Waging or attempting to wage war, or abetting waging of war, against the Queen.

121. Whoever wages war[1] against the Queen, or attempts to wage such war, or abets the waging of such war[2], shall be punished with death, or transportation for life, and shall forfeit all his property.

ILLUSTRATIONS.

(a) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(b) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

COMMENT.

This section embraces every description of war, whether by insurrection

1 *Harsha Nath Chatterjee*, (1914) 42 Cal. 1153.

or invasion. It punishes equally the waging of war against the King-Emperor, or attempting to wage such war, or abetting the waging of such war. The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war against the King, under this section, are offences under the Penal Code only, and are not treason or misprison of treason[1].

1. **'Wages war.'**—These words naturally import a person arraying himself in defiance of the King-Emperor in like manner and by like means as a foreign enemy would do, having gained footing within the realm[2]. There must be an insurrection, there must be force accompanying that insurrection, and it must be for an object of a general nature[3].

2. **'Abets the waging of such war.'**—Such abetment is made a special offence for two reasons. The First Law Commissioners observe: "In the first place, war may be waged against the Government by persons in whom it is no offence to wage such war, by foreign princes and their subjects. Our general rules on the subject of abetment would apply to the case of a person residing in the British territories who should abet a subject of the British Government in waging war against that Government; but they would not reach the case of a person who, while residing in the British territories, should abet the waging of war by any foreign prince against the British Government. In the second place, we agree with the great body of legislators in thinking, that though in general a person who has been a party to a criminal design which has not been carried into effect, ought not to be punished so severely as if that design had been carried into effect, yet an exception to this rule must be made with respect to high offences against the State; for state-crimes, and especially the most heinous and formidable state-crimes, have this peculiarity, that if they are successfully committed, the criminal is almost always secure from punishment. The murderer is in greater danger after his victim is despatched than before. The thief is in greater danger after the purse is taken than before. But the rebel is out of danger as soon as he has subverted the Government. As the penal law is impotent against a successful rebel, it is consequently necessary that it should be made strong and sharp against the first beginnings of rebellion, against treasonable designs which have been carried no further than plots and preparations. We have therefore not thought it expedient to leave such plots and preparations to the ordinary law of abetment[4]."

Conspiracy to commit offences punishable by section 121.

121-A. Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India, or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local

[1] *Amiruddin*, (1871) 7 B. L. R. 63.
[2] 2nd Rep. s. 10.
[3] *Frost*, (1839) 9 C. & P. 129.
[4] Note C.

Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

COMMENT.

This section provides for the offence of conspiring to wage war against the King. It was thought right to make the offence of conspiring by criminal force, or by show of criminal force, more severely penal, than the offence of actually taking part in an unlawful assembly, having for its object the overawing of the Government. The reason was this, that persons who, by conspiring to bring about such a result, set the whole matter in motion, seemed more criminal and far more deserving of punishment than those who were their mere tools, and only took part in such an assembly.

A conspiracy is a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means[1].

The explanation to this section says that to constitute a conspiracy under this section, it is not necessary that any act or illegal omission should take place in pursuance thereof. The conspiracy must be to deprive the King-Emperor of the sovereignty of India.

Collecting arms, etc., with intention of waging war against the Queen.

122. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

COMMENT.

This section is intended to put down with a heavy hand any preparation to wage war against the King-Emperor. The acts made punishable by this section cannot be considered attempts; they are in truth preparations made for committing the offence of waging war. This is the only section in which a mere preparation to commit an offence is an offence under the Code.

Concealing with intent to facilitate design to wage war.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the

[1] *Barindra Kumar Ghose*, (1909) 37 Cal. 467.

waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section re-iterates the principle enunciated in s. 118, the only difference being that the penalty under it is more severe.

Assaulting Governor-General, Governor, etc., with intent to compel or restrain the exercise of any lawful power.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor or Member of Council,

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section is an amplification of the third clause of s. 121-A. It punishes severely assaults, etc., made on high officers of Government.

Sedition.

124-A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

COMMENT.

Ingredients.—This section requires two essentials :

1. Bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards His Majesty the King-Emperor or the Government.

2. Such act or attempt may be done by (i) words, either spoken or written, or (ii) by signs, or (iii) by visible representation.

I. Bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards His Majesty or the Government established by law.—The offence does not consist in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by the publication of seditious articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within s. 124-A, and would probably fall within other sections of the Penal Code. If he tried to excite feelings of hatred or contempt towards the Government, that is sufficient to make him guilty under the section.

The essence of the crime of sedition consists in the intention with which the language is used. The intention of a speaker, writer or publisher may be inferred from the particular speech, article or letter. The intention is gathered from the articles[1]. If, on reading the articles or speeches, the reasonable and natural and probable effect of the articles or speeches on the minds of those who read them or to whom they were addressed, appears to be that feelings of hatred, contempt or disaffection would be excited towards the Government, the offence is commited[2].

This section places absolutely on the same footing the successful exciting of feelings or disaffection and the unsuccessful attempt to excite them.

'Attempts etc.'—It is not necessary in order to bring the case within

[1] *Bal Gangadhar Tilak*, (1897) 22 Bom. 112; *Ibid*, 10 Bom. L. R. 848; *Amba Prasad*, (1897) 20 All. 55, 69, F. B.; *Luxman Narayan Joshi*, (1899) 2 Bom. L. R. 286; *Shankar Shrikrishna Dev*, (1910) 12 Bom. L. R. 675.

[2] *Bal Gangadhar Tilak*, (1916) 19 Bom. L. R. 211.

this section that it should be shewn that the attempt was successful. Attempt does not imply success. An attempt is an intentional preparatory action which fails in object—which so fails through circumstances independent of the person who seeks its accomplishment[1]. Whoever tries to excite, attempts to excite, etc., is held to come within this section. Whether the intention has achieved the result is immaterial. If the accused tried to excite hatred and contempt, the fact that he failed to do so will be no justification for him. That will be a matter to be decided in determining the sentence[2].

'Government established by law in British India.'—This means British rule and its representatives as such—the existing political system as distinguished from any particular set of administrators[3]. This expression means the various Governments constituted by the statutes relating to the Government of India now consolidated into the Government of India Act (5&6 Geo. V, c. 61) and denotes the person or persons authorised by law to administer Executive Government in any part of British India[4]. 'Government' does not mean the person or persons for the time being. It means the person or persons collectively, in succession, who are authorised to administer Government for the time being. One particular set of persons may be open to objection and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government because they are only individuals, and are not representatives of that abstract conception which is Government[6].

'Swaraj' does not mean Government of the country to the exclusion of the present Government, but its ordinary acceptance is 'homerule' under the Government, and, therefore, incitement of members of a public meeting to exert themselves to secure 'swaraj' does not amount to sedition[5].

2. Such act or attempt may be done by words, either spoken or written or by signs or by visible representation.—Not only the writer of seditious articles but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to the Government is liable under the section, whether he is the actual author or not[7].

For everything that appears in his paper, the editor, printer, or publisher, is as responsible as if he had written the article himself. Whoever the composer might be, whosoever wrote or caused it to be written, the person who used it for purposes of exciting disaffection is guilty of an offence under this sections[8].

It is not sufficient for an accused person to say that what was put int his paper of a seditious character was put in during his absence and without his authority. If he did not authorize it, it is for him to prove that as a fact,

[1] *Luxman Narayan Joshi*, (1899) 2 Bom. L. R. 286, 296.

[2] *Bhaskar Balvant Bhopatkar*, (1906) 8 Bom. L. R. 421, at p. 439; *Luxman Narayan Joshi*, (1899) 2 Bom. L. R. 286.

[3] *Bal Gangadhar Tilak*, (1897) 22 Bom. 112, 135.

[4] *Bal Gangadhar Tilak*, (1916) 19 Bom. L.R. 211.

[5] *Bhaskar Balvant Bhopatkar*, sup. at p. 438.

[6] *Beni Bhushan Roy*, (1907) 34 Cal. 991.

[7] *Bal Gangadhar Tilak*, (1897) 22 Bom. 112, 129; *Jogendra Chunder Bose*, (1891) 19 Cal. 35, 41.

[8] *Bhaskar Balvant Bhopatkar*, sup.

because it must be within his knowledge whether any such authority was given[1].

'Written'—Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion. may be used for the purpose of exciting disaffection. Seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of some kind is necessary[2]. Sending a seditious matter by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication if it is opened by any body[3].

The sending through the post office of a packet containing a manuscript copy of a seditious publication with a covering letter requesting the addressee to circulate it among others, when the same was intercepted by another person and never reached the addressee, amounts to an attempt to commit sedition[4].

'Visible representation.'—Sedition does not necessarily consist of written matter: it may be evidenced by a wood-cut or engraving of any kind[5].

Explanations 2 & 3.—Both these explanations have a strictly defined and limited scope. They have no application unless the article in question criticises "the measures of Government" or "administrative or other action of the Government" without exciting or attempting to excite hatred, contempt or disaffection. The object of the explanation is to protect *bona fide* criticism of public measures and institutions with a view to their improvement, and to the remedying of grievances and abuses. But a publicist, a journalist, or a speaker has no right to attribute dishonest or immoral motives to Government[6]. Changes in policy and changes in measures are liable to criticism, and to criticise and urge objections to them is a special right of a free press in a free country. Every liberty is given to all men to express their opinions, so long as they do not misuse or abuse that power to the injury of others, including among injuries to others, injury to the State[7].

'Disapprobation'.—This means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him[8].

Liability for extracts from other papers.—The law does not excuse the publication in newspapers of writings which are in themselves seditious libels, merely because they are copied from foreign newspapers as items of news[9].

1 *Bhaskar Balvant Bhopatkar*, (1906) 8 Bom. L. R. 421 : *Luxman Narayan Joshi*, (1899) 2 Bom. L. R. 286 ; *Phanendra Nath Mitter*, (1908) 35 Cal. 945.

2 Foster, 198.

3 *Suresh Chandra Sanyal*, (1912) 39 Cal. 606.

4 *Surendra Narayan Adhicary*, (1911) 39 Cal. 522.

5 *Sullivan*, (1868) 11 Cox 44, 51.

6 *Bal Gangadhar Tilak*, (1908) 10 Bom. L. R. 848 ; *ibid*, (1897) 22 Bom. 112, 137 ; *Phanendra Nath Mitter*, (1908) 35 Cal. 945.

7 *Bhaskar Balvant Bhopatkar*, (1906) 8 Bom. L.R. 421, at p. 441.

8 *Jogendra Chunder Bose*, (1891) 19 Cal. 35, 44 ; *Bal Gangadar Tilak*, (1897) 22 Bom. 112, 137.

9 *Sullivan*, (1868) 11 Cox 44.

Liability for letters of correspondents.—The editor of a paper is liable for unsigned seditious letters appearing in the paper[1].

Republication of a seditious article used as an exhibit in a case of sedition is not justifiable[2].

Waging war against any Asiatic Power in alliance with the Queen.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

COMMENT.

This section restrains a person from making British India the focus of intrigues and enterprise for the restoration of deposed rulers or other like purposes. The fulfilment of the obligations of the State to allies and friendly powers requires that the abetment of such schemes by its subjects whether by furnishing supplies or otherwise should be forbidden[3]. The principle of this section is based upon international comity and a desire of the State to remain friendly with its neighbours[4].

Committing depredation on territories of Power at peace with the Queen.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

COMMENT.

The preceding section provided for waging war against any Asiatic Power in alliance with the King-Emperor, this section prevents the commission of depredation or plunder on territories of States at peace with the King-Emperor. The scope of this section is much wider than the preceding section for it applies to a Power which may or may not be Asiatic.

1 *Apurba Krishna Bose*, (1907) 35 Cal. 141.
2 *Ibid.*
3 M. & M. 105.
4 *Jameson*, [1896] 2 Q. B. 425, 430.

Receiving property taken by war or depredation mentioned in ss. 125 and 126.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

COMMENT.

This section applies to those persons who knowingly receive the property obtained by waging war with a power at peace with the King-Emperor or by committing depredation on its territories.

Public servant voluntarily allowing prisoner of State or war to escape.

128. Whoever, being a public servant and having the custody of any State prisoner[1] or prisoner of war[2], voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section and s. 225-A provide for one kind of offence. In both the sections the public servant who has the custody of the prisoner is punished if he voluntarily allows such prisoner to escape. In this section the prisoner must be a State prisoner or a prisoner of war; under s. 225-A the prisoner may be an ordinary criminal. The offence under this section is thus an aggravated form of an offence under s. 225-A.

1. 'State prisoner' is one whose confinement is necessary in order to preserve tranquillity in the territory of any Native State entitled to protection, or the security of the British dominions from foreign hostility or from internal commotion, and who has been confined by the order of the Governor-General in Council[1].

2. 'Prisoner of war' is one who in war is taken in arms. Those who are not in arms, or who being in arms submit and surrender themselves are not to be slain but to be made prisoners. But it seems those only are prisoners of war who are taken in arms[2].

Public servant negligently suffering such prisoner to escape.

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be

[1] Beng. Reg III of 1818, Bom. Reg. XXV of 1817, Mad. Reg II of 1819.

[2] M. & M. 107.

punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

The offence under this section is like the one noticed in s. 128. Under it the escape of the prisoner should be owing to the *negligence* of the public servant. Section 128 punishes a public servant who *voluntarily* allows a State prisoner to escape. Section 223 punishes the escape of an ordinary prisoner under similar circumstances.

Aiding escape or rescuing or harbouring such prisoner.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

COMMENT.

This section uses words more extensive than those in the two preceding ones which contemplate an escape only from some prison or actual place of custody. Again in the last two sections the offender is a public servant: under this section he may be any person. The scope of this section is much narrower than s. 129. This section requires that the rescue or assistance should be given "knowingly".

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

The first Law Commissioners observe :—" It is obvious that a person who, not being himself subject to military law exhorts or assists those who are subject to military law to commit gross breaches of discipline, is a proper subject of punishment. But the general law respecting the abetting of offences will not reach such a person...because the military delinquency which he has abetted is not punishable by this Code, and therefore is not...an affence. Nor is it desirable that the punishment of a person not military, who has abetted a breach of military discipline, should be fixed according to the principles on which we have proceeded in framing the law of abetment. We have provided that the punishment of the abettor of an offence shall be equal or proportional to the punishment of the person who commits that offence; and this seems to us a sound principle when applied only to the punishments provided by this Code. But the military penal law is, and must necessarily be, far more severe than that under which the body of the people live...The extension of such severity to persons not members of the military profession appears to us altogether unwarrantable. If a person, not military, who abets a breach of military discipline, should be made liable to a punishment regulated, according to our general rules, by the punishment to which such a breach of discipline renders a soldier liable, the whole symmetry of the penal law would be destroyed. He who should induce a soldier to disobey any order of a commanding officer would be liable to be punished more severely than a dacoit, a professional thug, an incendiary, a ravisher or a kidnapper. We have attempted in this Chapter to provide, in a manner more consistent with the general character of the Code, for the punishment of persons who, not being military, abet military crimes[1]."

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier or sailor, in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—In this section the words "officer" and "soldier" include any person subject to the Articles of War, for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869.

[1] Note D.

COMMENT.

The first part of this section relates to the offence of abetting mutiny. The offence contemplated is an abetment which is not followed by actual mutiny, or which, supposing actual mutiny follows, is not the cause of that mutiny.

The offence of 'mutiny' consists in extreme insubordination, as if a soldier resists by force, or if a number of soldiers rise against or oppose their military superiors, such acts proceeding from alleged or pretended grievances of a military nature. Acts of riotous nature directed against the Government or civil authorities rather than against military superiors seem also to constitute mutiny[1].

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Whoever abets the committing of mutiny by an officer, soldier or sailor, in the Army or Navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section punishes the abetment of mutiny when mutiny is committed in consequence of that abetment. It therefore prescribes enhanced penalty.

Abetment of assault by soldier or sailor on his superior officer, when in execution of his office.

133. Whoever abets an assault by an officer, soldier or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

This section punishes abetment of an assault which is not committed. The next section punishes similar abetment where the offence is committed.

Abetment of such assault if the assault is committed.

134. Whoever abets an assault by an officer, soldier or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a

[1] M. & M. 112.

term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section punishes the abetment of an assault when such assault is committed in consequence of that abetment. It stands in the same relation to s. 133 just as s. 132 does to s. 131.

Abetment of desertion of soldier or sailor.

135. Whoever abets the desertion of any officer, soldier or sailor, in the Army or Navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

The desertion abetted under this section need not take place. Mere abetment is made punishable.

Harbouring deserter.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier or sailor, in the Army or Navy of the Queen, has deserted, harbours such officer, soldier or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

COMMENT.

A person harbouring a deserter is an 'accessory after the fact'. The gist of the offence is concealment of a deserter to prevent his apprehension. Exception is only made in the case of wife.

The word 'harbour' is defined in s. 216 B, but that definition is only applicable to ss. 212, 216, and 216 A.

Deserter concealed on board merchant vessel through negligence of master.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

COMMENT.

This section punishes the master or person in charge of a merchant ship on board of which a deserter has concealed himself. The master is liable even though he is ignorant of such concealment.

Abetment of act of insubordination by soldier or sailor.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier or sailor, in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.

In this section it is expressed as part of the definition of the offence that the abettor knows the quality of the act abetted, that is, he knows it to be an act of insubordination.

Application of foregoing sections to the Indian Marine Service.

138-A. The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen.

Persons subject to Articles of War.

139. No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this chapter.

Wearing garb or carrying token used by soldier.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.

The gist of the offence herein made penal is the intention of the accused wearing the dress of a soldier for the purpose of inducing others to believe that he is in service at the present time. Merely wearing a soldier's garb

without the specific intention is no offence. Cast-off uniforms of soldiers are worn by many men. Actors put on different military uniforms.

This section applies to a 'soldier' and not to a 'sailor.' There is no distinctive garb of a sailor like a soldier. The section thus punishes the false personation of a soldier.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

The offences in the Chapter may be classified in the following four groups:—

I. Unlawful assembly.

(1) Being a member of an unlawful assembly (ss. 141, 142, 143).

(2) Joining an unlawful assembly armed with deadly weapons (s. 144).

(3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (s. 145).

(4) Hiring of persons to join an unlawful assembly (s.150).

(5) Harbouring persons hired for an unlawful assembly (s.157).

(6) Being hired to take part in an unlawful assembly (s. 158).

II. Rioting (ss. 146, 147).

(1) Rioting with deadly weapons (s. 148).

(2) Assaulting or obstructing a public servant in the suppression of a riot (s. 152).

(3) Wantonly giving provocation with intent to cause riot (s. 153).

(4) Liability of the owner or occupier of land on which an unlawful assembly is held or riot is committed (s. 154).

(5) Liability of the person for whose benefit a riot is committed (s. 155).

(6) Liability of the agent of owner or occupier for whose benefit a riot is committed (s. 156).

III. Promoting enmity between different classes (s. 153-A).

IV. Affray (ss. 159, 160).

Unlawful assembly.

141. An assembly of five or more[1] persons is designated an "unlawful assembly," if the common object[2] of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence ; or

Fourth.—By means of criminal force, or show of criminal force to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Being member of unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Punishment.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.

The underlying principle of s. 141 is that law discourages tumultuous assemblage of men to preserve public peace.

Section 141 defines what an unlawful assembly is. Section 142 gives the connotations of a member of an unlawful assembly. Section 143 punishes tumultuous assemblies as they endanger public peace. It does not require that the purpose of the unlawful assembly should have been fulfilled.

1. **'Five or more.'**—The assembly must consist of five or more persons having one of the five specified objects as their 'common object.' An unlawful assembly according to English law is an assembly of three or more persons for purposes forbidden by law.

2. **'Common object.'**— The essence of the offence is the common object of the persons forming the assembly. Whether the object is in their minds when they come together, or whether it occurs to them afterwards, is not material. But it is not necessary that the object should be common to the persons who compose the assembly, that is, that they should all be aware

of it and concur in it. It seems also that there must be some present and immediate purpose of carrying into effect the common object; and that a meeting for deliberation only, and to arrange plans for future action, is not an 'unlawful assembly[1].'

First clause.—The third clause of s. 121-A provides for a conspiracy to overawe Government of India.

Second clause.—Under this clause the act resisted must be a legal act. Where a number of persons resisted an attempt to search a house which was being made by officers, who had not the written order investing them with the power to do so, it was held that the persons resisting the attempted search were not guilty of this offence[2].

Third clause.—This clause specifies only two offences, *viz.*, mischief and criminal trespass, but the words "or other offences" seem to denote that all offences are included though only two are enumerated in a haphazard way.

Fourth clause.—The act falling within the purview of this clause is made punishable owing to the injurious consequences which it is likely to cause to the public peace. This clause does not take away the right of private defence of property. It does not affect cl. 2 of s. 105, which allows a person to recover the property carried away by theft. It is meant to prevent the resort to force in vindication of supposed rights. It makes a distinction between an admitted claim or an ascertained right and a disputed claim[3].

The expression 'right or supposed right' would seem to make a division into (1) rights in actual enjoyment when interfered with, (2) rights claimed though not in actual enjoyment when interfered with[4]. The phrase 'to enforce a right' can only apply when the party claiming the right has not possession over the subject of the right, and therein lies the distinction between enforcing a right and maintaining a right[5].

If persons are rightfully in possession of land, and find it necessary to protect themselves from aggression, they are justified in taking precautions and using such force as is necessary to prevent the aggression[6]. But when a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage in a fight with men who, on the one hand, are equally determined to vindicate by unlawful force, their rights or supposed rights, no question of self-defence arises. Neither side is trying to protect itself but each side is trying to get the better of the other[7].

Fifth clause.—This clause is very comprehensive and applies to all the rights a man can possess, whether they concern the enjoyment of property or not. There is no reference to 'any right or supposed right' as in the preceding clause.

[1] M. & M. 119

[2] *Narain*, (1875) 7 N. W. P. 209.

[3] *Gulam Hoosein*, (1909) 11 Bom. L. R. 849.

[4] *Ganouri Lal Das*, (1889) 16 Cal. 206, 219.

[5] *Ramnandan Prosad Singh*, (1913) 17 C. W. N. 1132.

[6] *Narsang Pathabhai*, (1890) 14 Bom. 441; *Pachkauri*, (1897) 24 Cal. 686; *Fateh Singh*, (1913) 41 Cal. 43.

[7] *Prag Dat*, (1898) 20 All. 459; *Kabiruddin*, (1908) 35 Cal. 368; *Maniruddin*, (1908) 35 Cal. 384.

The words 'to enforce a right or a supposed right,' show that it is perfectly immaterial whether the act which one seeks to prevent by the use of criminal force or show of criminal force is legal or illegal, the test of criminality being the determination to use criminal force and act otherwise than in due course of law so as to threaten the public peace[1].

Explanation.--An assembly which is lawful in its inception may become unlawful by the subsequent acts of its members[2]. It may turn unlawful all on a sudden and without previous concert among its members[3]. But illegal acts of one or two members, not acquiesced in by the others, do not change the character of the assembly[4].

A lawful assembly does not become unlawful merely because the members know that their assembly would be opposed and a breach of the peace would be committed[5].

Although individuals may, in the first instance, have associated themselves with a mob from motives perfectly innocent, nevertheless, if the mob is or becomes an unlawful assembly and the individuals in question take part in its proceedings, they will be liable as members of an unlawful assembly[6]. Where certain persons had assembled to prevent a procession by force from passing over a certain street, and they were ordered by the police to disperse but neglected to do so, it was held that they were guilty of the offence of being members of an unlawful assembly[7].

CASES.

Enforcement of right by use of criminal force.—Dispute regarding possession of land.—Where there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land, and the accused went to sow the land with indigo, accompanied by a body of men armed with sticks and who kept off the opposite party by brandishing their weapons while the land was sowed, it was held that they were guilty of this offence[8]. Where the accused, who were in possession of the disputed land, went upon it in a large body armed with sticks prepared in anticipation of a fight, and were reaping the paddy grown by them, when the complainant's party came up and attempted to cut the same, whereupon a fight ensued and one man was seriously wounded and died subsequently, it was held that the common object was not to enforce a right but to maintain undisturbed the actual enjoyment of a right and that the assembly was not therefore unlawful[9].

Private defence.—When an attack is made on persons acting in the lawful exercise of their right over property, they are entitled to the right of private defence, and the only question that arises thereafter is whether any member of the party individually exceeded the right. Persons exercising

1 *Tirakadu*, (1890) 14 Mad. 126, 130.
2 *Khemee Sing*, (1864) 1 W. R. 19; *Lokenath Kar*, (1872) 18 W. R. 2.
3 *Ragho Singh*, (1902) 6 C. W. N. 507.
4 *Dinobundo Rai*, (1868) 9 W. R. 19.
5 *Beatty* v. *Gillbanks*, (1882) 9 Q. B. D. 308.
6 *Periapien*, (1882) 1 Weir 66.
7 *Tirakadu*, (1890) 14 Mad. 126.
8 *Peary Mohun Sircar*, (1883) 9 Cal. 639.
9 *Silajit Mahto*, (1909) 36 Cal. 865.

their lawful rights are not members of an unlawful assembly, nor can the assembly become unlawful by their repelling an attack made on them by persons who had no right to obstruct them, nor by exceeding the lawful use of their right of private defence. In such a case each is liable only for his individual acts done in excess of such right[1].

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining unlawful assembly armed with deadly weapon.

COMMENT.

This is an aggravated from of the offence mentioned in the last section. The risk to the public tranquillity is aggravated by the intention of using force evinced by carrying arms. The enhanced punishment under this section can only be inflicted on that member of an unlawful assembly who uses a weapon of offence.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly knowing it has been commanded to disperse.

COMMENT.

This section is connected with s. 151, *infra*. Section 188 of the Penal Code provides for the disobedience of any lawful order promulgated by a public servant. Sections 145 and 151 deal with special cases as the disobedience may cause serious breach of the peace. As to the powers of the Police to disperse an unlawful assembly, see s. 127, Criminal Procedure Code.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

[1] *Kunja Bhuiya*, (1912) 39 Cal. 896.

COMMENT.

riot is an unlawful assembly in a particular state of activity, which ity is accompanied by the use of force or violence. It is only the use force that distinguishes rioting from an unlawful assembly[1].

Ingredients.—The following are the essentials of the offence of rioting:

(1) That the accused persons, being *five* or more in number, formed an unlawful assembly.

(2) That they were animated by a common object.

(3) That force or violence was used by the unlawful assembly or any member of it in prosecution of the common object.

The use of any force, even though it be of the slightest possible character, by any one of an assembly once established as unlawful constitutes rioting[2]. If the common object of an assembly is not illegal, it is not rioting even if force is used by any member of that assembly[3]. Section 141 indicates what objects are deemed unlawful.

'Force or violence'.—The word 'violence' is not restricted to force used against persons only, but extends also to force against inanimate objects[4].

Resistance to illegal warrant.—Resistance to the execution of an illegal warrant within reasonable bounds does not amount to rioting; but when the right of resistance is exceeded and a severe injury, not called for, is inflicted, the person who inflicts such injury may be convicted of such injury[5].

Sudden quarrel.—If a number of persons assembled for any lawful purpose suddenly quarrel without any previous intention or design, they do not commit 'riot' in the legal sense of the word[6]. Similarly, if a fight were to spring up between two of the persons unlawfully assembled, this would only make them individually responsible, and not convert the assembly into a riot[7]. The existence of a common object before the commencement of the fight is not necessary. It is enough if the common object is adopted by all the accused[8].

Private defence.—There can be no right of private defence, where the riot is premeditated on both sides[9]. Where both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that that party was acting within the legal limits of the right of private defence[10]. Persons exercising their lawful rights are not members of an unlawful assembly, nor can the assembly become unlawful by their repelling an attack made on them by persons who had no right to obstruct them, nor by exceeding the lawful use of their right of private defence. In such a case each is liable only for his individual acts done in excess of such right[11].

1 *Rasul*, (1888) P. R. No. 4 of 1889.
2 *Koura Khan*, (1868) P. R. No. 34 of 1868; *Ramadeen Doobay*, (1876) 26 W. R. 6.
3 *Jagarnath Mandhata*, (1897) 1 C. W. N. 233; *Parmeshwar Singh*, (1899) 4 C. W. N. 345.
4 *Samaruddi*, (1912) 40 Cal. 367.
5 *Uma Charan Singh*, (1901) 29 Cal. 244.
6 *Khajah Noorul Hossein* v. *Fabre-Tonnerre*, (1875) 24 W. R. 26.
7 *Muzhur Hossein*, (1873) 5 N. W. P. 208.
8 *Golla Hanumappa*, (1911) 35 Mad. 243.
9 *Prag Dat*, (1898) 20 All. 459.
10 *Kalee Beparee*, (1878) 1 C. L. R. 521.
11 *Kunja Bhuiya*, (1912) 39 Cal. 896.

CASES.

When several Hindus, acting in concert, forcibly removed an ox and two cows from the possession of a Mahomedan, not for the purpose of causing 'wrongful gain' to themselves or 'wrongful loss' to the owner of the cattle, but for the purpose of preventing the killing of the cows, it was held that they were guilty of rioting[1]. The party of the accused accompanied by R went armed with sticks to fish in a tank in which R had a two annas share. The complainant, who, with some other co-sharers, represented an eleven annas interest in the tank, went there with some of these co-sharers to protest on the ground that the accused had no share or interest in the tank. A fight ensued in the course of which some of the complainant's party received slight injuries. It was held that the accused were guilty of rioting and voluntarily causing hurt[2]. The accused went with three ploughs on land to which the complainant had the right of possession, and of which he was in possession till such entry, and began to plough up the land, to uproot some castor plants, and to throw them away. While they were thus in actual but temporary occupation, the complainant and his party went on the land and tried to unyoke the cattle, whereupon a riot took place. It was held that the accused were guilty of rioting and that their action in beating the complainant's party was not justified by the fact of their having obtained temporary occupation[3].

Not unlawful assembly.—The accused, receiving information that the complainant's party were about to take forcible possession of a plot of land, which was found by the Court to be in the possession of the accused, collected a large number of men, some of whom were armed, and went through the village to the land in question. While they were engaged in ploughing, the complainant's party came up and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded and subsequently died, and two of the accused's party were hurt. It was held that the accused were justified in taking such precautions as they thought were required to prevent the aggression, and that they could not be held to be members of an unlawful assembly[4]. Where the servants of a party, who had obtained delivery of possession of certain land, in execution of a decree, went upon it accompanied by a number of others armed with *lathis*, and were engaged in ploughing it, when they were attracked by a large body of men belonging to the party of the judgment-debtor, and thereupon a fight ensued in the course of which some members of both sides received injuries, it was held that their master having been put in actual possession by a competent Court the servants were not guilty of rioting or of constructive grievous hurt[5]. Where the petitioners were maintained in possession of certain lands, under s. 145 of the Criminal Procedure Code, including the homestead of A, and the opposite party unlawfully attempted to take possession of some huts standing thereon,

1 *Raghunath Rai*, (1892) 15 All. 22.

2 *Anant Pandit* v. *Madhusudan Mandal*, (1899) 26 Cal. 574; *Ganouri Lal Das*, (1889) 16 Cal. 206.

3 *Jairam Mahton*, (1907) 35 Cal. 103.

4 *Pachkauri*, (1897) 24 Cal. 686.

5 *Fateh Singh*, (1913) 41 Cal. 43.

whereupon the petitioners came with an armed body and demolished the huts, and on being resisted by the opposite party wounded some of them, it was held by the majority of the Court, that they were justified in taking precautions and using such force as was necessary to prevent aggression by the opposite party[1].

Separate trials.—Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly and to try them together; as they cannot have one common object within the meaning of s. 141, each party should be tried separately[2].

Rioting, armed with deadly weapon.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

Similar to s. 144 this section is an aggravated from of the offence mentioned in the previous section. Enhanced punishment is provided if a person is armed with a deadly weapon.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that asssembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

COMMENT.

This section creates no offence, but like s. 34, is merely declaratory of a principle of the common law, which at any rate in England has prevailed. Its object is to make clear that an accused person whose case falls within its terms cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object[3].

This section is wider than s. 34. In it the joint liability is founded on 'common object;' in s. 34, on 'common intention.' Both sections deal with liability for constructive criminality, i.e., liability for an offence not committed by the person charged.

1 *Poresh Nath Sircar*, (1905) 33 Cal. 295.

2 *Hossein Buksh*, (1880) 6 Cal. 96; *Buchu Mullah* v. *Sia Ram Singh*, (1886) 14 Cal 358; *Chandra Bhuiya*, (1892) 20 Cal. 537.

3 *Bisheshar*, (1887) 9 All. 645.

Scope.—This section is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the object. It is divided into two parts : (1) an offence committed by a member of an unlawful assembly in prosecution of the common object of that assembly ; and (2) an offence such as the members of that assembly knew to be likely to be committed in prosecution of that object. In order to bring a case within the provisions of this section the act must be done with a view to accomplish the common abject of the unlawful assembly, or it must be proved that the offence, though not committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object[1].

Members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of this section may be different on different members of the same unlawful assembly[2].

CASES.

Prosecution of common object.—Where a small compact body of men armed with *lathis*, and headed by a man carrying a gun, endeavoured to take forcible possession of certain lands, and one of the opponents was shot by their leader, it was held that they were all guilty of murder[3].

No common object.—A large body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After this retirement, a member of the second faction was killed. It was held that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under this section, be made liable for the subsequent murder[4]. Where a number of persons went together to eject a man from a piece of land, the title of which was in dispute, and upon a vigorous resistance being made, one of the party, who was armed with a gun, fired at, and killed the resisting person, it was held that he was guilty of murder, but that the other members of the unlawful assembly were not guilty of murder under this section as the act of killing was not the common object of the assembly, or "likely to be committed in the prosecution of that object[5]."

1 *Sabid Ali*, (1873) 20 W. R. 5, 11 B. L. R. 347 ; *Krishnarao Narayanrao*, (1903) 5 Bom. L. R. 1023.
2 *Jahiruddin*, (1894) 22 Cal. 306.
3 *Hari Singh*, (1878) 3 C. L. R. 49.
4 *Kabil Cazee*, (1869) 3 B.L.R. A. Cr. J. 1.
5 *Sabed Ali*, (1873) 11 B.L.R. 347, 20 W. R. 5.

150. Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Hiring, or conniving at hiring, of persons to join unlawful assembly.

COMMENT.

This section brings within the reach of the law those who are really the originators and instigators of the offences committed by hired persons. It deals with the case of those who are neither abettors nor participators of the offence committed by an unlawful assembly.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under s. 145.

COMMENT.

Section 145 punishes the continuance in an unlawful assembly after it has been commanded to disperse. In this section the assembly need not be an 'unlawful assembly,' but if it is likely to cause a disturbance of the public peace then joining or continuing in such assembly after it has been commanded to disperse is punishable. Section 127 of the Criminal Procedure Code confers on a Magistrate and an officer in charge of a police station the power to disperse an unlawful assembly.

152. Whoever assaults or threatens to assault, or obstructs or attempts so obstruct, any public servant in the

Assaulting or obstructing public servant when suppressing riot, etc.

discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

COMMENT.

The last section punished disobedience to the order of a public servant commanding an assembly to disperse. This section punishes more severely persons who assault a public servant endeavouring to disperse an unlawful assembly. This section is intended to prevent the use of force on a public servant in order to prevent him from discharging his duty.

Wantonly giving provocation, with intent to cause riot—

153. Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and, if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

if rioting be committed;

if not committed.

COMMENT.

A person, who maliciously or recklessly gives provocation to another by doing an illegal act knowing that such provocation will incite the other to rioting, is punishable under this section. It is divided into two parts. If rioting is committed the punishment is more severe.

1. '**Malignantly**' implies a sort of general malice[1]. The adverbs maliciously and malignantly are synonymous. Malice is not, as in ordinary speech, only an expression of hatred or ill-will to an individual, but means an unlawful act done intentionally without just cause or excuse[2]. Malignant means extreme malevolence or enmity; violently hostile or harmful.

1 *Kahanji*, (1893) 18 Bom. 758, 775.

2 *Bromage* v. *Prosser*, (1825) 4 B. & C. 247.

2. **'Wantonly'** means recklessly, thoughtlessly, without regard for right or consequences. This word gives to the offence contained in this section a far larger, vaguer and more comprehensive scope, than would be implied by the word 'malignantly' standing alone. It occurs only in this section of the Code, while the word 'malignantly' occurs once again in s. 270.

153-A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty s subjects shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Promoting enmity between classes.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

COMMENT.

This section punishes persons who create enmity between different classes of His Majesty's subjects. It supplements the law of sedition.

To bring the charge home to the accused the Court must be satisfied that the accused had a conscious intention of promoting, causing, or exciting enmity and hatred between various classes, *e. g.*, Europeans and Indians[1]. There must be a deliberate attempt to incite one class against another[2].

Explanation.—The explanation requires honesty and absence of malicious intention.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees,

Owner or occupier of land on which an unlawful assembly is held.

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

[1] *Jaswant Rai*, (1907) P. R. No. 10 of 1907.

[2] *Joy Chandra Sarkar*, (1910) 38 Cal. 214.

and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

COMMENT.

Many duties of the police are by law imposed on landholders. The present section proceeds apparently upon a presumption that, in addition to any such duty, the owner or occupier of land is cognisant in a peculiar way of the designs of those who assemble on his land, and is able not only to give the Police notice, but also to prevent and to disperse and suppress the assembly[1].

Section 45 of the Code of Criminal Procedure casts upon the owners and occupiers of land the duty of preventing a riot on their lands.

Knowledge on the part of the owner or occupier of the land, of the acts or intentions of the agent is not an essential element of an offence under this section, and he may be convicted under it though he may be in entire ignorance of the acts of his agent or manager[2].

Liability of persons for whose benefit riot is committed.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

COMMENT.

Under the preceding section the owner of land is punishable for the taking place of an unlawful assembly or riot on his land. This section requires that the unlawful assembly or riot should take place in the interest

1 M. & M. 128

2 *Kazi Zeamuddin Ahmed*, (1901) 28 Cal. 504; *Payag Singh*, (1890) 12 All. 550.

of the owner or any person claiming interest in the land. The section therefore imposes unlimited fine. The preceding section referred to an unlawful assembly, as well as a riot: this section refers to riot only.

The principle on which this and the following sections proceed is to subject to fine all persons in whose interest a riot is committed and the agents of such persons, unless it can be shown that they did what they lawfully could do to prevent the offence.

Liability of agent of owner or occupier for whose benefit riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

COMMENT.

The provisions of the last two sections are by this section made applicable to the agent or manager of the owner or occupier of land.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.

Section 150 makes the hiring of persons to join an unlawful assembly punishable, whereas this section makes punishable the harbouring of such hired persons. It has a wider application.

Being hired to take part in an unlawful assembly or riot;

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both;

or to go armed.

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT

This section is intended to punish those persons who hire themselves out as members of an unlawful assembly or assist any such members. The section is divided into two parts. Higher penalty is awarded where the accused is armed with a deadly weapon.

Affray.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

Punishment for committing affray.

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both

COMMENT.

The word 'affray' is derived from the French word *affraier*, to terrify, and in a legal sense it is taken for a public offence to the terror of the people. The essence of the offence consists in the terror it is likely to cause to the public.

Ingredients.—This section requires three things.—

1. Two or more persons must fight.
2. They must fight in a public place.
3. They must disturb the public peace.

1. Two or more persons.—Affray requires two persons at the least. An unlawful assembly requires five.

2. Fighting in a public place.—'Public place' is a place where the public go, no matter whether they have a right to go or not. Many shows are exhibited to the public on private property, yet they are frequented by the public—the public go there[1]. It is obvious that what is a public place may vary from time to time, and what the Court has to consider is, was a particular place at the time public ? a place where the public undoubtedly were[2]. An omnibus[3], a railway platform[4], a public urinal[5], and a goods yard of a railway station[6], are held to be public places. A private *chabutra* adjoining a public thoroughfare[7], a railway station and platform at a time when no train is due, except a goods train[8], are held not to be public places.

3. Disturb the public peace.—An affray is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance. No quarrelsome or threatening words whatsoever will amount to an affray.

Affray and riot.- An affray differs from a riot--

(1) Affray cannot be committed in a *private place*, riot can be.

(2) Affray can be committed by *two* or more persons, riot by *five* or more.

Affray and Assault. -An affray differs from an assault—

(1) The former must be committed in a public place; the latter may take place anywhere.

(2) The former is regarded as an offence against the public peace; the latter, against the person of an individual. An affray is nothing more than an assault committed in a public place and in a conspicuous manner, and is so called because it affrighteth and maketh men afraid.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

This Chapter deals with two classes of offences, of which one can be committed by public servants alone, and the other comprises offences which relate to public servants, though they are not committed by them.

The First Law Commissioners observe: -"Those offences which are common between public servants and other members of the community, we leave to the general provisions of the Code. If a public servant embezzles public money, we leave him to the ordinary law of criminal breach of trust. If he falsely pretends to have disbursed money for the public, and by this deception induces the Government to allow it in his accounts, we leave him to the ordinary law of cheating. If he produces forged vouchers to back his statement, we leave him to the ordinary law of forgery. We see no reason for

[1] *Wellard*, (1884) 14 Q. B. D. 63, 67.

[2] Per Coleridge, C. J., in *ibid*, p. 66.

[3] *Holmes*, (1853) 3 C. & K. 360.

[4] *Davis*, (1857) 26 L. J. Ex. 393.

[5] *Harris*, (1871) L. R. 1 C. C. R. 282.

[6] *Cawasji*, v. *G. I. P. Ry.* (1902) 4 Bom. L. R. 290, 26 Bom. 609.

[7] *Sri Lal*, (1895) 17 All. 166.

[8] *Madan Mohan*. (1883) 3 A. W. N. 197.

punishing these offences more severely when the Government suffers by them than when private people suffer[1]."

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration[1], as a motive or reward[2] for doing or forbearing to do any official act[3] or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant taking gratification other than legal remuneration in respect of an official act.

Explanations.—"Expecting to be a public servant."—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves, to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

[1] Note E

ILLUSTRATIONS.

(a) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as reward for this service. A has committed the offence defined in this section.

COMMENT.

This section is intended to prevent public servants from taking bribes in any shape whatsoever.

1. 'Legal remuneration' means what is given to a public servant by the Government which he serves or by any person having authority from that Government to give, or what is given to him by person any whosoever, if the Government permits him to accept the gift[1].

The words of the section exclude the defence that the benefit bargained for was to go to somebody else, and also the notion than an officer is protected if he agrees to let his official acts be swayed by the motive of accepting a gratification to be used for advancing some public not private object, such as charity, science or religion. The *Mahars* (sweepers) of a certain village having been suspended from their office for some months, a meeting of the villagers was held at the house of the Patel, at which the Patel was present, to consider the question of their restoration to office, and an agreement was there come to that they should be restored on their paying Rs. 300 towards the repair of the village temple, it was held that the Patel being a public servant had committed an offence under s. 161[2].

2. 'A motive or reward.'—This explanation will not allow a public servant to justify his acceptance of a gift or bribe by urging that the order passed by him was nevertheless a just one and against the very person from whom he received the bribe.

When a bribe has been given it is immaterial to enquire what, if any, effect the bribe had on the mind of the receiver.[3] The taking of a bribe by a head clerk to influence a Judge in his decisions was held sufficient for a

1 M. & M. 135.

2 *Appaji Yadavrao*, (1896) 21 Bom. 517, 520.

3 *Indra Nath Banerjee* v. *E. G. Rooke*, (1909) 14 C. W. N. 101.

legal conviction whether the head clerk did or did not influence or try to influence that officer[1].

3. **'Official act.'**—It must be an act or omission in connection with the official functions of the accused. If it is not an act of official duty the receipt of money is not a bribe, *e. g.*, if a policeman arrests a man outside his jurisdiction and releases him on receiving a sum of money, this is not a bribe, for it is no part of his official duty to make the arrest.

Accomplice.—The mere presence of a person on the occasion of the giving of a bribe, and his omission to promptly inform the authorities, do not constitute him an accomplice, unless it can be shown that he somehow co-operated for the payment of the bribe, or was instrumental in the negotiations for the payment[2].

Abetment.—A person offering a public servant an illegal gratification for any of the purposes stated in the section is liable for abetment of an offence under this section[3].

Attempt.—To ask for a bribe is an attempt to obtain one and a bribe may be asked for as effectually in implicit as in explicit terms[4].

CASE.

One R being desirous of getting his name registered as a candidate for the post of copyist in the Court of the District Judge of Lyallpur was told by the accused, the Jamadar of Chaprasis, that it would be necessary to make a present to the clerk of the Court before R could get what he wished and it was agreed between them that Rs. 20 should be paid. It was held that the accused was guilty of the offence under this section[5].

Taking gratification, in order, by corrupt or illegal means, to influence public servant.

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any member of the Senate of the Allahabad University, or with any public servant, as such, shall be punished with imprisonment of

[1] *Kaleechurn Sheristadar*, (1865) 3 W.R. 10.

[2] *Deodhar Singh*, (1889) 27 Cal. 144.

[3] *Maganlal*, (1889) 14 Bom. 115.

[4] *Baldeo Sahai*, (1879) 2 All. 253; *Ratan Moni Dey*, (1905) 32 Cal. 292.

[5] *Ghulam Muhammad*, (1916) P. R. No. 9 of 1917.

either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

A person, who accepts for himself, or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable under this section. Under this section the public servant is to be induced by corrupt or illegal means. The next section deals with the case where the public servant is induced by personal influence.

Taking gratification for exercise of personal influence with public servant.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person which the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any member of the Senate of the Allahabad University, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

ILLUSTRATION.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust,—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

COMMENT.

Sections 162 and 163 only apply to cases where the party who is to exercise corrupt or undue influence does so for a consideration obtained from a third person. If he does so, without receiving any gratification, to serve his own private interest, or for the benefit of another, whether voluntarily or upon solicitation, no offence will have been committed under these sections. If guilty at all, he can only be guilty as an abettor.

It will follow, therefore, that if the act done is not an offence in the public servant, it is no offence in the person who instigates him to it. Hence, a person, who of his own accord, or without being himself bribed, offers any gratification whatever to a public servant, will be punishable as an abettor of the offence in s. 161.

Punishment for abetment by public servant of offences defined in section 162 or 163.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

ILLUSTRATION.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

COMMENT.

This section is one of the express provisions for the punishment of abetment referred to in s. 109. Enhanced punishment is provided for an offence which would have been punishable under the provisions of abetment of an offence.

Public servant obtaining valuable thing without consideration, from person concerned in proceeding or business transacted by such public servant.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

ILLUSTRATIONS.

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

COMMENT.

Public servants are prohibited from taking presents under this section, just as they are prohibited from taking any gratification under s. 161. If they were allowed to take presents they might be induced to take bribe in the shape of presents. Under s. 161 the gratification is taken as a motive or reward for doing or forbearing to do an official act ; under this section the question of motive or reward is not material as the section probibits the taking of a thing without consideration from a person having any connection with the official functions of the public servant.

Public servant disobeying law, with intent to cause injury to any person.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

ILLUSTRATION.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

COMMENT.

The offence under this section consists in a wilful departure from the direction of the law intending to cause injury to any person. Mere breach of departmental rules will not bring a public servant within the purview of this section.

Public servant framing an incorrect document with intent to cause injury.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

The preceding section deals generally with the disobedience of any direction of law; this section deals with a specific instance, *viz.*, that of framing an incorrect document with intent to cause injury. This section is similar to s. 218.

Public servant unlawfully engaging in trade.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

COMMENT.

This section punishes those public servants who are legally bound not to engage in trade. If public servants were allowed to trade they would fail to perform their duties with undivided attention. Being in official position they could easily obtain unfair advantages over other traders.

Public servant unlawfully buying or bidding for property.

169. Whoever, being a public servant, and being legally bound, as such public servant not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

COMMENT.

This section is merely an extension of the principle enunciated in the

last section. It prohibits a public servant from purchasing or bidding for property which he is legally bound not to purchase.

Personating a public servant.

170. Whoever pretends to hold any particular office[1] as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act[2] under colour of such office[3], shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

COMMENT.

Mere personation is not an offence under this section. The person personating must do or attempt to do some act under colour of the office of the public servant whom he personates. Section 140 punishes the person who wears the garb or carries the token used by a soldier. This section punishes a person who does any act in the assumed character of a public servant.

1. 'Particular office.'—It must be an existing office. If it is uncertain who legally fills the office, a person doing an official act, in pursuance of what he honestly believes to be his lawful title to the office, does not come within this section.

2. 'Any act.'—It is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated [1]. The accused was arrested when he was demanding one anna's worth of fruit from a fruit-seller for one pice on the representation that he was a Head Constable, which in fact he was not. It was held that if he pretended to be a Police Officer and as such Police Officer tried to extort money or things from a fruit-seller he had committed an offence under this section.

3. 'Colour of such office.'—An act is done 'under colour of' an office, if it is an act having some relation to the office, which the actor pretends to hold. If it has no relation to the office, as if A pretending to be a servant of Government, travelling through a district, obtain money, provisions, etc., the offence may, amount to cheating under s. 415, but is not punishable under this section[2]. The act done under colour of office must be an act which could not have been done without assuming official authority. Where the accused avoided paying a one-anna platform charge by pretending upon entering the station platform that he was an officer of the Criminal Investigation Department, it being a custom of the railway company not to require from such officers a platform ticket, it was held that this did not constitute an offence under this section[3].

1 *Aziz-ud-din*, (1904) 27 All. 294.
2 M. & M. 142.
3 *Sukhdeo Pathak*, (1917) 3 P. L.J. 389.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

COMMENT.

Under this section the offence is complete, although no act is done or attempted in the assumed official character. The mere circumstance of wearing a garb, or using a token, with the intention or knowledge supposed, is sufficient. It is not necessary that something should pass in words. If any act is done then the preceding section will apply.

Under s. 140 wearing the garb or carrying the token of a soldier is made punishable.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

This Chapter deals with penal provisions intended to enforce obedience to the lawful authority of public servants. Contempts of the lawful authority of Courts of Justice, officers of Revenue, officers of Police, and other public servants are punishable under this head.

172. Whoever absconds[1] in order to avoid being served with a summons, notice or order[2] proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

Absconding to avoid service of summons or other proceeding.

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

Absconding to avoid service of summons or other proceeding is similar to non-attendance in obedience to an order from a public servant. The object of this section is to punish an offender for the contempt his conduct indicates of the authority whose process he disregards.

The second clause applies where the summons, notice, or order is (1) for attendance in Court; or (2) for production of a document.

1. **'Absconds'.**–This term is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense are to hide oneself, and it matters not whether a person departs from a place or remains in it, if he conceals himself; nor does the term apply only to the commencement of the concealment. If a person, having concealed himself before process issues, continues to do so after it is issued, he absconds[1].

2. **'Summons, notice, or order.'**—The 'summons, notice or order' referred to should be addressed to the same person whose attendance is required and who absconds to avoid being served with such 'a summons, notice or order.' A warrant is not an order served on an accused, it is simply an order to the Police to arrest him[2].

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a

1 *Madapusi Shrinivasa Ayyangar*, (1881) 4 Mad. 393, 397.

2 *Lakshmi*, (1881) Unrep. Cr. C. 152, Cr. R. No. 21 of 1881.

Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

This section punishes intentional prevention of the service of summons, notice or order.

A refusal to sign a summons [1], a refusal to receive a summons [2], and throwing down of a summons after service [3], do not constitute the offence of intentionally preventing the service of a summons under this section. Under the Criminal Procedure Code the mere tender of a summons is sufficient and a refusal to receive does not expose one to the penalty of this section. Actual delivery is not necessary to complete the service [4].

Non-attendance in obedience to an order from public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

ILLUSTRATIONS.

(*a*) A being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*) A being legally bound to appear before a Zila Judge, as a witness, in obedience to a summons issued by that Zila Judge, intentionally omits to appear. A has committed the offence defined in this section.

[1] *Kalya bin Fakir*, (1868) 5 B. H. C. (Cr. C.) 34; *Krishna Gobinda Das*, (1892) 20 Cal. 358.

[2] *Punamalai Nadan*, (1882) 5 Mad. 199.

[3] *Arumuga Nadan*, (1881) 5 Mad. 200 (*n*)., 1 Weir 79.

[4] *Sahdeo Rai*, (1918) 40 All. 577.

COMMENT.

The offence contemplated by this section is an omission to appear

(1) at a particular specified[1] place in British India[2],

(2) at a particular time, and

(3) before a specified public functionary,

(4) in obedience to a summons, notice, or order (written or verbal)[3] not defective in form[4] and

(5) issued by an officer having jurisdiction[5] in the matter.

A conviction cannot be had unless the person summoned was

(1) legally bound to attend, and

(2) refused or intentionally omitted to attend[6].

CASES.

Wilful departure before lawful time.—A man in obedience to a summons attended a Magistrate's Court at 10 A. M., but finding the Magistrate not present at the time mentioned in the summons, departed without waiting for a reasonable time, it was held that he was guilty of an offence under this section[7].

Public servant absent.—Where a public servant was absent on a date fixed in the summons, the person summoned could not be convicted, though he purposely failed to attend[8].

Omission to produce document to public servant by person legally bound to produce it.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

ILLUSTRATION.

A, being legally bound to produce a document before a Zila Court, intentionally omits to produce the same. A has committed the offence defined in this section.

1 *Ram Saran*, (1882) 5 All. 7.
2 *Paranga*, (1893) 16 Mad. 463.
3 *Guman*, (1873) Unrep. Cr. C. 75; (1870) 5 M.H.C. App. 15.
4 *Krishtappa*, (1896) 20 Mad. 31.
5 *Venkaji Bhaskar*, (1871) 8 B. H. C. (Cr. C.) 19; (1865) 1 Weir 87.
6 *Sreenath Ghose*, (1868) 10 W. R. 33.
7 *Kisan Bapu*, (1885) 10 Bom. 93.
8 *Krishtappa*, (1896) 20 Mad. 31.

COMMENT.

This section punishes persons who refuse to produce documents which they are legally bound to produce before a public servant.

Omission to give notice or information to public servant by person legally bound to give it.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both :

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

This section applies to persons upon whom an *obligation* is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation[1] and not where the public servants have already obtained the information from other sources[2]. Several Acts have imposed obligation on the public to give certain kinds of information to public servants.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the information which he is legally bound to give

1 *Phool Chand Brojobassee*, (1871) 16 W. R. 35.
2 *Sashi Bhusan Chuckrabutty*, (1878) 4 Cal. 623 ; *Pandya Nayak*, (1884) 7 Mad. 436 ; *Gopal Singh*, (1892) 20 Cal. 316.

respects the commission of an offence, or is required for the purposes of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ILLUSTRATIONS.

(*a*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*) A, a village-watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under cl. 5, s. 7. Reg. III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police Station, wilfully misinforms the Police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Explanation.—In section 176 and in this section the word "offence" includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

COMMENT.

Section 176 deals with the omission to give information, this section deals with the giving of false information. Under both the sections the liability depends upon legal obligation to give information. Persons who are not under any legal obligation to furnish information cannot be dealt with under this section.

Refusing oath or affirmation when duly required by public servant to make it.

178. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

The refusal to take an oath amounts to contempt of Court. The person refusing may be dealt with under s. 480 of the Criminal Procedure Code summarily or the Court may proceed under s. 195 of the same Code.

Refusing to answer public servant authorized to question.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

The offence under this section consists in the refusal to answer a question which is relevant to the subject concerning which the public servant is authorized to enquire, or which at least touches that subject. Under ss. 121 to 132 of the Indian Evidence Act a witness is exempted from answering certain questions. If a person gives false answers then he will be guilty under s. 193 and not under this section.

Refusing to sign statement.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.

The statement must be such an one as the accused can be legally required to sign, e.g., statement recorded under the provisions of ss. 164 and 364 (2) of the Criminal Procedure Code.

False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.

181. Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorised by law to administer such oath or affirmation, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he

either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

This section should be compared with s. 191. It is more general. Under it a false statement to any public servant is punishable. Section 191 describes the offence in which the false statement is made at any stage of the judicial proceeding.

This section applies only where the public servant is *authorized by law to administer an oath*[1]; it does not apply where the public servant administers the oath in a case wholly *beyond his jurisdiction*[2]; and also where he is not competent to take a statement on solemn affirmation[3].

Sections 181 and 193.—It has been held by the Bombay and Calcutta High Courts that this section does not apply to cases in which a person gives a false statement on oath before a public officer in a stage of judicial proceeding, such a person being liable to be convicted under s. 193, but only refers to cases in which the false statement is made in proceedings *other than* judicial proceedings[4]. The Madras High Court has, however, held that a witness in a criminal case, who gives false evidence before a Magistrate, may be convicted by a Magistrate under s. 181, though he might also have been charged under s. 193, and, if so charged, would only have been triable by the Sessions Court[5]. But in an earlier case it was also said that s. 181 would appear to apply to cases in which the proceedings were not of judicial character[6].

False information with intent to cause public servant to use his lawful power to the injury of another person.

182. Whoever gives to any public servant any information[1] which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(*a*) to do or omit anything[2] which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[1] *Niaz Ali*, (1882) 5 All. 17.
[2] *Andy Chetty*, (1865) 2 M.H.C. 438.
[3] *Kotha Subba Chetti*, (1883) 6 Mad. 252.
[4] *Buloram*, (1867) 7 W. R. 104; *Dayalji Endarji*, (1871) 8 B.H.C. 21.
[5] (1869) 4 M. H. C. App. 18.
[6] *Andy Chetty*, sup.

ILLUSTRATIONS.

(a) A informs a Magistrate that Z, a Police Officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Masgistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

COMMENT.

The object of this section is that a public servant should not be falsely given information with the intent that he should be misled by a person who believed that information to be false, and was intended to mislead him. Thus it is an offence to give false information which misleads a public servant into doing what he ought not to do, whether that can be shown to be intended for the purpose of injuring any particular person or not.

1. 'Any information.'—Any 'false information' given to a public servant, with the intent mentioned in the section, is punishable under it whether that information is volunteered by the informant or is given in answers to questions put to him by the public servant [1]. But statements made by a prisoner for the purposes of his defence do not fall under this section [2].

2. 'To do or omit anything.'—It is not necessary that the public servant to whom false information is given should be induced to do anything or to omit to do anything in consequence of such information. The gist of the offence is not what action may or may not be taken by the public servant to whom false information is given; but the intention or knowledge (to be inferred from his conduct) of the person supplying such information [3].

Under this clause it is not necessary to show that the act done would be to the injury or annoyance of any third person [4].

CASES.

Causing a public servant to do what he ought not to do.—The accused falsely telegraphed to a District Magistrate that the town had been attacked by a gang of 200 robbers, the Magistrate put no faith in the telegram and

[1] *Ramji Sajabarao,* (1885) 10 Bom. 124.

[2] *Daria Khan,*(1870) 2 N. W. P. 128.

[3] *Budh Sen,* (1891) 13 All. 351; *Raghu Tiwari,* (1893) 15 All. 336.

[4] *Ganesh Khanderao,* (1889) 13 Bom. 506.

took no action ; it was held that the accused were guilty of an offence under this section[1]. A personated B at an examination and passed the examination and obtained a certificate in B's name. B, thereupon, applied to have his name entered in the list of candidates for Government service. He attached to this application the certificate issued in his name, and his name was ordered to be entered on the list of candidates. It was held that he was guilty under this section[2].

Resistance to taking of property by lawful authority or public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

This section makes it penal to offer resistance to the taking of property by the lawful authority of any public servant.

Lawful authority wanted. —Where a person resisted an official in attaching property under a warrant, the term of which had already expired[3] or which did not specify the date on or before which it was to be executed, it was held that he was not liable under this section[4]. If the warrant is executed by a *nazir* when it is addressed to a peon, resistance to the *nazir* is not illegal[5].

If a bailiff breaks the doors of a third person in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house ; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under s. 183 or s. 186[6].

Obstructing sale of property offered for sale by authority of public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

1 *Budh Sen*, (1891) 13 All. 351.

2 *Ganesh Khanderao*, (1889) 13 Bom. 506.

3 *Anand Lall Bera*, (1883) 10 Cal. 18.

4 *Mohini Mohan Banerji*, (1916) 1 P. L. J. 550.

5 *Ibid.*

6 *Gazi Aba Dore*, (1870) 7 B. H. C. (Cr. C.) 83.

COMMENT.

This section punishes intentional obstruction of the sale of any property conducted under the lawful authority of a public servant.

Illegal purchase or bid for property offered for sale by authority of public servant.

185. Whoever, at any sale of property[1] held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

COMMENT.

This section makes it penal to bid at a public sale for property on account of a party who is under a legal incapacity to purchase it, or to bid for it not intending to complete the purchase, or as it is expressed to perform the obligations under which the bidder lays himself by such bidding [1].

1 **'Property.'**—This word is used in its wide sense. The right to sell drugs is a monopoly granted for a certain area and comes within the definition of property. A person who bids at an auction of the right to sell drugs within a certain area under a false name and, when the sale is confirmed in his favour, denies that he has ever made any bids at all, is guilty of an offence under this section[2].

Obstructing public servant in discharge of public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.

This section provides for voluntarily obstructing a public servant in the discharge of his duties. It must be shown that the obstruction or resistance was offered to a public servant in the discharge of his duties or public functions as authorized by law. The mere fact of a public servant believing

1 2nd Rep., s. 110.

2 *Bishan Prasad*, (1914) 37 All. 128.

that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction to him amount to an offence[1]. If the public servant is acting in good faith under colour of his office there is no right of defence against his act.[2]

CASES.

Rescuing from custody.—Where two peons of a Court of Justice arrested the accused and while they were bringing him towards the Court, he called for help and four other persons came and rescued him from the custody of the peons, it was held that they were guilty of an offence under this section, and the accused of abetting the same[3].

No obstruction if no overt act done or physical means used.—A District Judge ordered that the house of the defendant, in a suit pending before him, be searched and certain property brought to the Court, and appointed a Commissioner to carry out that order. The Commissioner went to the house, but the defendants shut the doors, and would not admit him. A crowd collected, and the Commisssioner felt it would be unsafe to proceed to carry out the order by force and was unable to do so otherwise. It was held that the defendants had committed no offence under this section[4].

A person chaining from within the door of his house at the approach of an official charged with the execution of a warrant to attach his moveable property[5]; a cart owner refusing to give his cart on hire to a Government officer[6]; a person spreading a false report and thereby preventing persons from bringing their children for vaccination[7]; and a person preventing a vaccinator from taking lymph from the arm of his child[8], were held to have committed no offence under this section.

No obstruction if order or warrant under which a public servant acts is not legal.—Where a District Magistrate issued a warrant for the arrest and production of a witness for the purpose of giving evidence at an investigation held by the Police, and in attempting to execute such warrant the Police arrested the wrong person, and were assaulted in the attempt, it was held that as the District Magistrate had no authority to issue such warrant the accused were justified in their resistance and that no offence under s. 143 or s. 186 was committed[9]. A person obstructing a public servant executing a warrant of arrest which was not signed by the Magistrate but only bore his initials and the substance of which was not notified to him was held to have committed no offence under this section[10].

1 *Baroda Kanto Pramanick*, (1896) 1 C. W. N. 74; *Lilla Singh*, (1894) 22 Cal. 286; *Tulsiram*, (1888) 13 Bom. 168.

2 *Poomalai Udayan*, (1898) 21 Mad. 296; *Pilkot Kotu*, (1896) 19 Mad. 349.

3 *Sheo Progash Tewari* v. *Bhoop Narain Prosad Pathak*, (1895) 22 Cal. 759.

4 *Sommanna*, (1892) 15 Mad. 221.

5 *Maina*, (1888) Cr. R. 70 of 1888, Unrep. Cr. C. 407.

6 *Dhori Kullan*, (1872) 9 B. H. C. 165.

7 *Thimmachi*, (1891) 15 Mad. 93.

8 *Komati Ramannah*, (1882) 1 Weir 131.

9 *Jogendra Nath Mukerjee*, (1897) 24 Cal. 320; *Tulsiram*, (1888) 13 Bom. 168.

10 *Abdul Gafur*, (1896) 23 Cal. 896; *Satish Chandra Rai* v. *Jodu Nandan Singh*, (1899) 26 Cal. 748.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

Omission to assist public servant when bound by law to give assistance.

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

COMMENT.

This section provides, first, in general terms, for the punishment when a person, being bound by law to render assistance to a public servant in the execution of his public duty, intentionally omits to assist; and, secondly, it provides for the punishment when the assistance is demanded for certain specified purposes [1].

The section speaks of *assistance* to be rendered to public servants, just as ss. 176 and 177 speak of furnishing *true information.*

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order, with certain property in his possession or under his management, disobeys such direction,

Disobedience to order duly promulgated by public servant.

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may

[1] *Ramaya Naika*, (1903) 26 Mad. 419, 420, F. B.

extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likey to produce, harm.

ILLUSTRATION.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

COMMENT.

To constitute this offence it is necessary to show

(1) a lawful order promulgated by a public servant empowered to promulgate it;

(2) a knowledge of the order which may be general or special, and disobedience of it; and

(3) the result that is likely to follow such disobedience.

Order to be for public purposes.—This section applies to orders made by public functionaries for public purposes and not to an order made in a civil suit between party and party[1]. Disobedience of a temporary injunction issued by the Court will not, therefore, come within the purview of this section[2]. An order issued by a Magistrate prohibiting a landlord from holding a new market on his estate close to an old established one belonging to a neighbouring landlord, on the ground that it had caused unlawful assemblies and raised apprehension of a breach of the peace[3]; an order to the priests of a temple, much frequented by pilgrims, to widen and heighten the doorway so as to obviate the dangers from over-crowding, and improve the ventilation[4]; and an order commanding an assembly of five or more persons to disperse[5], are all held to be orders under this section.

[1] *Chandrakanta De*, (1880) 6 Cal. 445.

[2] *Mallapa*, (1915) 17 Bom. L. R. 676.

[3] *Bykuntram Shaha Ray*, (1872) 10 B. L. R. 434, F. B., 18 W. R. 47.

[4] *Ramchandra Eknath*, (1869) 6 B. H. C. (Cr. C.) 36.

[5] *Tucker, Norman and Thompson*, (1882) 7 Bom. 42.

Order to be directed to the accused.—Where the accused was convicted for disobeying an order posted at a certain place by a Magistrate prohibiting people from burying and burning corpses there, it was held that the order, not having been served individually upon the accused, the conviction was illegal[1]. The proprietor of a theatre, not in actual possession or management of the theatre at a time when a lawful order promulgated by a public servant was disobeyed, was held to have committed no offence under this section[2].

Threat of injury to public servant.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

Under this section there must be a threat of injury either to the public servant or to any one in whom the accused believes the public servant to be interested. What the section deals with are menaces which would have a tendency to induce the public servant to alter his action. See s. 503 which defines criminal intimidation. Section 503 applies in all cases: this section deals with criminal intimidation of a public servant.

Threat of injury to induce person to refrain from applying for protection to public servant.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered, as such, to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

The object of this section is to prevent persons from terrorising others with a view to deter them from seeking the protection of public servants against any injury. Where a clergyman, knowing that a civil suit was pending against A for the possession of certain church property, excommu-

[1] *Sukar Budhia*, (1870) Unrep. Cr. C. 30.

[2] *Krishna Shet*, (1890) Cr. R. No. 59 of 1890, Unrep. Cr. C. 527.

nicated him for withholding it, it was held that the clergyman had committed no offence under this section[1].

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

The Code treats the giving and the fabricating of false evidence in exactly the same way, and marks the grades of those offences on the principle that the law ought to make a distinction between the kind of false evidence which produces great evils and the kind of false evidence which produces comparatively slight evils[2].

The offences comprised in this Chapter can be grouped as follows :—

1. Giving, fabricating, or using false evidence.
2. Issuing, or using, false certificate.
3. Making a false statement in a declaration and using it as true.
4. Causing disappearance of evidence of an offence.
5. Intentional omission to give, or giving false information respecting an offence.
6. Destruction of a document.
7. False personation for purposes of a suit.
8. Removal of, or fraudulent claim to, property to prevent its seizure.
9. Suffering decree or making a false claim, or obtaining a false decree.
10. False charge of an offence.
11. Harbouring offenders.
12. Gift to screen offenders.
13. Public servant disobeying direction of law.
14. Public servant framing incorrect record or report.
15. Wrongful commitment.
16. Intentional omission to apprehend or suffering escape of offenders.
17. Resistance to lawful apprehension.
18. Unlawful return from transportation.
19. Contempt of Court.
20. Personation of a juror or assessor.

Giving false evidence.

191. Whoever being legally bound by an oath or by an express provision of law[1] to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false[2], and which he either knows or believes to be false, or does not believe to be true[3], is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section.

[1] *In re DeCruz*, (1884) 8 Mad. 140.   [2] Stokes, Vol. 1, p. 30.

and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

ILLUSTRATIONS.

(*a*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(*e*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

COMMENT.

The offence of giving false evidence is called 'perjury' under the English law.

Ingredients.—The offence under this section involves three ingredients:—

(1) A person must be legally bound

(*a*) by an oath, or any express provision of law, to state the truth; or

(*b*) to make a declaration upon any subject.

(2) He must make a false statement.

(3) He must

(*a*) know or believe it to be false, or

(*b*) not believe it to be true.

English law.—According to English law a statement on oath, or affirmation, to amount to perjury, must be

(1) taken in a judicial proceeding;

(2) taken before a competent tribunal;

(3) material to the question;

(4) false; and

(5) known by the witness to be false or not known to be true.

Difference between Indian and English law.—(1) According to English law, the false statement must have reference to some judicial proceedings;

and the false evidence must be given before a competent tribunal. In the Code this distinction only exists in reference to the degree of punishment imposed[1].

(2) According to English law, perjury must be proved by two witnesses, or by one witness with proof of other material and relevant facts substantially confirming his testimony. Under the Penal Code no particular number of witnesses in any case is required to prove any fact[2].

(3) The English law requires that the matter sworn to must be material to the cause depending in the Court. According to the Penal Code it is not necessary that the statement should be material but that would be considered in awarding punishment[3].

(4) In England, an oath, or an affirmation rendered equivalent to it by law, is an essential element of the offence. It is immaterial whether the fact which is sworn be in itself true or false. In India, an oath is merely one of the forms by which a party may be bound to speak the truth. Even if an oath were improperly administered by any incompetent person, still the offence would be committed, if the party giving the false evidence were bound by an 'express provision of law to state the truth.'

I. 'Legally bound by an oath or by an express provision of law.'—It is necessary that the accused should be legally bound by an oath before a competent authority. If the Court has no authority to administer an oath the proceeding will be *coram non judice* and a prosecution for false evidence will not stand[4]. Similarly if the Court is acting beyond its jurisdiction it will not be sustained[5].

'By an oath.'—An oath or a solemn affirmation is not *sine qua non* in the offence of giving false evidence[6]. The offence may be committed although the person giving evidence has neither been sworn nor affirmed[7].

'By any express provision of law.'—Under this clause sanction of an oath is not necessary: there must be a specific provision of law compelling a person to state the truth. Where the accused is not bound by any express provision of law to state the truth he cannot be charged for giving false evidence[8].

'Declaration upon any subject.'—In certain cases the law requires a declaration from a person of verification in a pleading; and if such declaration is made falsely it will come under this clause. The words "any subject" denote that the declaration must be in connection with a subject regarding which it was to be made.

Criminal Procedure Code, s. 161 (2).—Under s. 161 (2) of the present

1 See *Bal Gangadhar Tilak*, (1904) 6 Bom. L.R. 324, 326.

2 The Indian Evidence Act, I of 1872.

3 See *Babu Ram*, (1904) 26 All. 509.

4 *Abdul Majid* v. *Krishna Lal Nag*, (1893) 20 Cal. 724; *Niaz Ali*, (1882) 5 All. 17; *Mata Dayal*, (1897) 24 Cal. 755; *Kotha Subba Chetti*, (1883) 6 Mad. 252.

5 *Chait Ram*, (1883) 6 All. 103; *Bharma Lingappa*, (1886) 11 Bom. 702, F. B.

6 (1865) 2 W. R. Cr. L. 9.

7 *Gobind Chandra Seal*, (1892) 19 Cal. 355; *Shava*, (1891) 16 Bom. 359; contra *Maru*, (1888) 10 All. 207.

8 *Hari Charan Singh*, (1900) 27 Cal. 455.

Criminal Procedure Code, 1898, a person is no longer bound by law to tell the truth when questioned by a Police Officer. The Code of 1882 contained the word 'truly' after the word 'questions' in sub-section (2) of s. 161, but it has been omitted in the present Code.

2. **'Any statement which is false.'**—It is not necessary that the false evidence should be material to the case in which it is given[1].

It must be shown that the statement said to have been false could not but be false. It is not sufficient to show that the probabilities are that the statement was false[2].

3. **'Knows or believes to be false or does not believe to be true.'**—The matter sworn must be either false in fact, or, if true, the accused must not have known it to be so. A man may be guilty of this offence if he swears that he believes or thinks a fact to be true when it is not[3].

The making of a false statement, without knowledge as to whether the subject-matter of the statement is false or not, is legally the giving of false evidence[4]. Where a man swears to a particular fact, without knowing at the time whether the fact be true or false, it is as much perjury as if he knew the fact to be false, and equally indictable[5].

But a man cannot be convicted of perjury for having acted rashly or for having failed to make reasonable enquiry with regard to the facts alleged by him to be true[6].

Written statements.—A person filing a written statement in a suit is bound by law to state the truth and if he makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of this offence[7].

But the verification of an application, in which the applicant makes a false statement, does not subject him to punishment for this offence, if such application does not require verification[8].

Criminating statement is no justification.—When a party makes a false statement while legally bound by solemn affirmation, the fact that the statement was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence[9].

Illegality of trial does not purge perjury.—The fact that the trial in which false evidence is given is to be commenced *de novo* owing to irregularity does not exonerate the person giving false evidence in that trial from the obligation to speak the truth, and he is liable for giving false evidence[10]. But in a Bombay case the proceedings in the trial at which the false evidence was given were subsequently annulled in consequence of the sanction for the prose-

1 *Parbutty Churn Sircar*, (1866) 6 W. R. 84; *Damodhar Ramchandra Kulkarni*, (1868) 5 B. H. C. (Cr. C.) 68.

2 *Hira Nand Ojha*, (1906) 10 C. W. N. 1099.

3 *Schlesinger*, (1847) 10 Q. B. 670.

4 *Echan Meeah*, (1865) 2 W. R. 47.

5 *Mawbey*, (1796) 6 T. R. 619,637.

6 *Muhammad Ishaq*, (1914) 36 All. 362.

7 *Mehrban Singh*, (1884) 6 All. 626.

8 *Kasi Chunder Mozumdar*, (1880) 6 Cal. 440; *Ganeshi*, (1905) 25 A. W. N. 52.

9 (1867) 3 M. H. C. App. xxxix.

10 *Virasami* (1896) 19 Mad. 375; *Batesar Mandal*, (1884) 10 Cal. 604.

cution being insufficient and the conviction of the accused was, therefore, reversed[1].

Non-liability of the accused for giving false evidence.—The First Law Commissioners observe: " We have no punishment for false evidence given by a person when on his trial for an offence, though we conceive that such a person ought to be interrogated....If A stabs Z, and afterwards on his trial denies that he stabbed Z, we do not propose to punish A as a giver of false evidence "[2]. The accused shall not render himself liable to punishment by refusing to answer questions put by the Court or by giving false answers to them[3].

CASES.

False evidence.—A witness falsely deposing in another's name[4]; a person falsely verifying his plaint[5]; and an official making a false return of the service of summons[6], were held guilty of giving false evidence.

Abetment.—Where an accused asked a witness to suppress certain facts in giving his evidence against him (accused), it was held that he was guilty of abetment of giving false evidence in a stage of a judicial proceeding[7]. Where C falsely represented himself to be U, and the writer of a document signed by U, and T, knowing that C was not U and had not written such document, adduced C as U as the writer of that document, it was held that T was guilty of abetment of giving false evidence[8].

False application for execution of a decree.—Signing and verifying an application for execution containing false statements is an offence under this section, and it makes no difference that at the time when the signature and verification were appended the application was blank[9].

Fabricating false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding[2], or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material[3] to

[1] *Ravji Taju*, (1871) 8 B. H. C. (Cr. C.) 37

[2] Note G.

[3] Criminal Procedure Code, s. 342.

[4] *Prema Bhika*, (1863) 1 B.H.C. 89.

[5] *Luxumandas*, (1869) Unrep. Cr. C. 25, Cr. R. of 1869.

[6] *Shama Churn Roy*, (1867) 8 W. R. 27.

[7] *Andy Chetty*, (1865) 2 M. H. C. 438.

[8] *Chundi Churn Nauth*, (1867) 8 W. R. 5.

[9] *Ratanchand Dhanram*, (1904) 6 Bom. L. R. 886.

the result of such proceeding, is said "to fabricate[4] false evidence."

ILLUSTRATIONS.

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

COMMENT.

The wording of this section is so general as to cover any species of crime which consists in the endeavour to injure another by supplying false data upon which to rest a judicial decision.

Ingredients.—The offence defined in this section contains three ingredients :—

(1) Causing any circumstance to exist, or making any false entry in any book or record, or making any document containing a false statement.

(2) Doing one of the above acts with the intention that it may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant or an arbitrator.

(3) Doing such act with the intention that it may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain erroneous opinion touching any point material to the result of such proceeding.

1. 'Judicial proceeding.'—The Code of Criminal Procedure says that judicial proceeding' includes any proceeding in the course of which evidence 's or may be legally taken on oath [s. 4 (*m*)]. The power to take evidence ion oath, which includes affirmation as well[1], is the characteristic test of 'judicial proceeding'. But the above definition will chiefly apply to cases relating to procedure[2]. 'Judicial proceeding' means nothing more nor less than a step taken by the Court in the course of the administration of justice in connection with a case[3].

2. 'Public servant'.—The provisions of this section are not confined to false evidence to be used in judicial proceedings, but to any proceedings before a public servant.

3. 'Material.'—The false evidence under this section should be material to the case in which it is given though not so under s. 191[4]. The word

[1] The General Clauses Act (X of 1897), s. 3 (36).

[2] *Kassim Khan*; *Mussamut Dahia*, (1881) 7 Cal. 121, F. B.; *Sankaralinga Kone*, (1900) 23 Mad. 544.

[3] *Venkatachalam Pillai*, (1864) 2 M. H. C. 43 ; *Tulja*, (1887) 12 Bom. 36, 42.

[4] *Tookaram*, (1862) Unrep. Cr.C. 2.

'material' means of such a nature as to affect in any way, directly or indirectly, the probability of anything to be determined by the proceeding, or the credit of any witness, and a fact may be material although evidence of its existence was improperly admitted[1].

4. '**Fabricate.**'—The term fabrication refers to the fabrication of false evidence ; and if the evidence fabricated is intended to be used in a judicial proceeding, the offence has been committed as soon as the fabrication is complete ; it is immaterial that the judicial proceeding has not yet been commenced[2].

It is not essential to show that any actual use has been made of the evidence fabricated. The mere fabrication is punishable under s. 193 ; the use of the fabricated article is punishable under s. 196.

The evidence fabricated must be admissible evidence[3].

Non-liability of the accused for fabricating false evidence.—The first Law Commissioners observe : "We do not propose to punish a person for fabricating evidence with the view of escaping punishment, unless he also contemplated some injury to others as likely to be produced by the evidence so fabricated. If A stabs Z, and, in order to escape detection, disposes Z's body in such a manner as is likely to lead a jury to think the death accidental, we do not propose to punish A as the fabricator of false evidence"[4].

CASES.

Fabrication of evidence to be used in a judicial proceeding.—Where the accused was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender, it was held that the Magistrate was right in convicting and punishing the accused for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding, and of voluntarily assisting in concealing stolen property under s. 414[5]. Where a public servant, in charge as such of certain documents, having been required to produce them and being unable to do so, fabricated and produced similar documents with the intention of screening himself from punishment, it was held that his offence fell within this section[6]. Where the date of a document, which would otherwise not have been presented for registration within time, was altered for the purpose of getting it registered, it was held that this offence had been committed[7]. One C, whose brother D was an accused person, applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first of all be made to identify D. The Court assenting to this request, C produced before the Court ten or twelve men, none of whom could be identified as D by any of the witnesses. Upon being asked by the Court where D was, C pointed out a man, who was not D. It was held that C was guilty of fabricating false evidence[8].

Attempt.—Facts showing that an accused person had dug a hole intend-

1 Stephen's Digest, Art. 148.
2 *Mula*, (1879) 2 All. 105.
3 *Zakir Husain*, (1898) 21 All. 159.
4 Note G.
5 *Rameshar Rai*, (1877) 1 All. 379.
6 *Mazhar Husain*, (1883) 5 All. 553.
7 *Mir Ekrar Ali*, (1880) 6 Cal. 482.
8 *Cheda Lal*, (1907) 29 All. 351.

ing to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, were held to justify conviction for an attempt to fabricate false evidence[1].

Abetment.—M instigated Z to personate C and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. It was held that the offence of fabricating false evidence had been actually committed, and that M was guilty of abetting it[2].

No fabrication if no erroneous opinion could be formed touching any point material to the result of a proceeding.—Where a person produced, as evidence in a suit, a registered deed of sale in which the property sold was wrongly numbered, and which was corrected by himself subsequent to registration[3]; and where there was a dispute as to the ownership of articles in a box in the accused's house, and he made a hole in the wall of the house and removed the articles he claimed, his object being to make it appear that there had been a theft, but he did not charge any one with having committed the theft[4], it was held that there was no fabrication.

No fabrication if evidence fabricated not admissible.—Where a Police Officer, who had suppressed a document, made a false entry in his diary, to support his assertion that he had forwarded certain documents, intending that such entry might be used as evidence in his behalf that he had so forwarded the document, it was held that the evidence fabricated must be admissible evidence and as the entry would not be admissible in his behalf, though contrary to his intention, he was not liable[5]. A Police Officer, who made a false entry in the special diary relating to a case which was being investigated by him but the document in which the alleged false entry was made was not one which was admissible in evidence, was held not guilty[6].

No fabrication if public servant not authorised to hold investigation.—The making up falsely of accounts with the intention of producing them before a Forest Officer not empowered by law to hold an investigation and take evidence was held not to be a fabrication of false evidence[7].

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

1 *Nunda*, (1872) 4 N.W.P. 133.
2 *Mula*, (1879) 2 All. 105; *Durgacharan Gir*, (1902) 25 All. 75.
3 *Fateh*, (1882) 5 All. 217.
4 *Thewa Ram*, (1882) 10 C. L. R. 187.
5 *Gauri Shankar*, (1883) 6 All. 42.
6 *Zakir Husain*, (1898) 21 All. 159.
7 *Ramajirav Jivbajirav*, (1875) 12 B. H. C. 1.

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-Martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

COMMENT.

Sections 191 and 192 define the offences punishable under this section. The first para applies only to cases in which the false evidence is given in a judicial proceeding, the second, to all other cases. If the offence is committed in any stage of a judicial proceeding it is more severely punishable than when it is committed in a non-judicial proceeding.

Intention is the essential ingredient in the constitution of this offence. If the statement was false, and known or believed by the accused to be false, it may be presumed that in making that statement he intentionally gave false evidence.

Contradictory statements.—Where a person makes two contradictory statements, he may now be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false[1].

If one of the statements is made before a Magistrate not having authority to carry on preliminary inquiry in the case and the other before a Magistrate

[1] *Vide* ill. (*b*) to s. 236, Criminal Procedure Code.

having jurisdiction, there will not be a sufficient basis for an alternative charge of giving false evidence[1]. But where a witness had made one statement on oath before a Third Class Magistrate, under s. 164, Criminal Procedure Code, and again another and totally inconsistent statement at the trial of the case before a First Class Magistrate, it was held that he could be convicted under the second—if not under the first—paragraph of s. 193[2].

It is necessary to prove that both the contradictory statements were such that a charge of giving intentionally false evidence might have been made in regard to either of them or in regard to both of them in the alternative[3].

Giving or fabricating false evidence with intent to procure conviction of capital offence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law of British India or England, shall be punished with transportation for life, or with rigorous imprisonment for a term wich may extend to ten years, and shall also be liable to fine;

If innocent person be thereby convicted and executed.

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

COMMENT.

This is an aggravated form of the offence of giving or fabricating false evidence made punishable by s. 193.

To constitute an offence under this section the accused must give false evidence intending thereby to cause some person to be convicted of a capital offence.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

195. Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law of British India or England is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a

1. *Bharma Ningappa*, (1886) 11 Bom. 702, F. B.
2. *Khem*, (1899) 22 All. 115.
3. *Hari Charan Singh*, (1900) 27 Cal. 455.

person convicted of that offence would be liable to be punished.

ILLUSTRATION.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

COMMENT.

This section is similar to the preceding section except as regards the gravity of the offence in respect of which the perjury is committed. The preceding section dealt with perjury in the case of an offence punishable with death, this section deals with an offence punishable with transportation for life or imprisonment for a term of seven years or upwards. In the case of a person who burnt his own house and charged another with the act, it was held that he should not be convicted under this section, but under s. 211[1]; but where A with a view to having B convicted, assisted in concealing stolen railway pins in his house and field, it was held that A was properly convicted of an offence under this section[2].

196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

COMMENT.

This section applies to those who make use of such evidence as is made punishable by ss. 193, 194 and 195. It must be read with ss. 191 and 192, and can only apply to the use of evidence which was false evidence within the meaning of s. 191, or fabricated evidence within the definition laid down in s. 192[3]. A brought a suit upon a bond and at the trial sought to support his claim by a letter fabricated probably for the purpose of enabling him to get the bond registered. A was convicted under this section. It was held that even if the letter was fabricated for use before the Registrar, it was no valid objection to the conviction[4]

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such

Issuing or signing false certificate.

[1] *Bhugwan Ahir*, (1867) 8 W.R. 65.

[2] *Rameshar Rai*, (1877) 1 All. 379.

[3] *Lakshmaji*, (1884) 7 Mad. 289, 290.

[4] *Ibid.*

certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

COMMENT.

Several laws require a certificate of some matter to be given. The offence of certifying in any of these, knowing or believing that the certificate is false, is put on the same footing as the offence of giving false evidence. The certificate must, however, be false in a material point. The issuing or signing must be by the officer or person authorised to certify.

Using as true a certificate known to be false.

198. Whoever corruptly uses or attempts to use any such certificate, as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

COMMENT.

This section is connected with s. 197 just as s. 196 is connected with ss. 193, 194 and 195.

False statement made in declaration which is by law receivable as evidence.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

COMMENT.

This section makes the penalty attached to the offence of giving false evidence applicable to declarations which, although not compellable, have on being made, the same effect as the compulsory declarations referred to in ss. 51 and 191[1]. Voluntary declarations are thus placed on the same level as compulsory declarations.

Using as true such declaration knowing it to be false.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

[1] *Vedamuttu*, (1868) 4 M. H. C. 185.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality. is a declaration within the meaning of sections 199 and 200.

COMMENT.

This section is connected with the last section just as s. 198 is with s. 197 or s. 196 to ss. 193, 194 and 195. The person who uses a false declaration is made liable as one who makes it.

Causing disappearance of evidence of offence, or giving false information to screen offender—

201. Whoever, knowing or having reason to believe that an offence has been committed[1], causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

if a capital offence;

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with transportation;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

ILLUSTRATION.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

COMMENT.

Object.—This section relates to the destruction of any evidence of the commission of an offence and includes also giving false information with the intention of screening an offender. Sections 202 and 203 relate to the giving or omitting to give such information, and s. 204, to the destruction of documentary evidence.

There are three groups of sections in the Code relating to the giving of information. First, ss. 118-120 dealing with concealment of design to commit an offence; secondly, ss. 176, 177, 181 and 182 deal with omission to give information and with giving of false information; and thirdly, ss. 201-203 deal with causing disappearance of evidence.

This section is intended to reach acts to which ss. 193 and 195 do not extend and not to include acts falling under those sections.

Scope.—This section does not refer to cases where a person causes the disappearance of evidence of an offence committed by himself, nor can a person be convicted for abetting such[1]. Where a person pushed a woman, and she fell into a boat and died instantaneously, and afterwards the prisoner set the boat with the corpse in it afloat down the river, and so concealed the evidence of his offence[2]; and where A and B, after causing the death of C in B's field, removed C's body to C's field[3], it was held that no offence under this section was committed. The section applies to persons other than the actual criminals who, by their causing evidence to disappear, assist the principals to escape the consequences of their offence[4]. Where a person through fear did not interpose to prevent the commission of a murder, and afterwards helped the murderers in concealing the body, it was held that he was not guilty of abetment of murder, but was guilty of an offence under this section[5].

1. **'Knowing or having reason to believe that an offence has been committed.'**—It must be proved that an offence, the evidence of which the accused is charged with causing to disappear, has actually been committed[6], and that the accused knew, or had information sufficient to lead him to believe, that the offence had been committed[7].

Intentional omission to give information of offence by person bound to inform.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished

1 *Kashinath Dinkar*, (1871) 8 B.H.C.(Cr.C.) 126; *Ghanasham Ramchandra Mantri*, (1906) 8 Bom. L.R. 538.
2 *Ramsoonder Shootar*, (1867) 7 W.R. 52.
3 *Kishna*, (1880) 2 All. 713.
4 *Kishna*, (1880) 2 All. 713; *Dungar*, (1886) 8 All. 252; *Torap Ali*, (1895) 22 Cal. 638; *Ramaswami Gounden*, (1903) 27 Mad. 271.
5 *Goburdhun Bera*, (1866) 6 W.R. 80.
6 *Abdul Kadir*, (1880) 3 All. 279, F. B.
7 *Matuki Misser*, (1885) 11 Cal. 619.

with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.

This section punishes the illegal omissions of those who are by some law bound to give information, when such omissions are intentional. It is similar to s. 176. See ss. 44 and 45, Criminal Procedure Code, as to the persons legally bound to give information.

Giving false information respecting an offence committed.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—In sections 201 and 202 and in this section the word "offence" includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

COMMENT.

The liability under this section attaches to any one who gives false information whether he is legally bound to furnish such information or not. The object of the legislature is to discourage and punish the giving of false information to the Police in regard to offences which are actually committed and which the person charged knows, or has reason to believe, has been actually committed. This section contemplates information volunteered by some person. It does not apply to the case of a person who gives false evidence as a witness to the police[1].

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being pro-

[1] *Sarju Sonar*, (1910) 7 A.L.J. R. 1150.

duced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

Section 175 deals with omission to produce or deliver up any document to any public servant, this section deals with secretion or destruction of a document which a person may lawfully be compelled to produce in a Court. The offence under this section is an aggravated form of the offence punishable under s. 175. The section applies whether the proceeding is of a civil or criminal nature.

CASES.

Secreting a document.—Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond, snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it, it was held that he had committed this offence[1].

Destroying a document.—Where a Police Officer took down at first the report of the commission of a dacoity made to him, but subsequently destroyed that report and framed another and a false report of the commission of a totally different offence he was held guilty of this offence[2].

False personation for purpose of act or proceeding in suit or prosecution.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

The offence punishable under this section is not merely cheating by using a fictitious name, but by falsely assuming to become other real person and in that character making an admissible statement, confessing judgment, or causing any process to be issued, etc.

Any fraudulent gain or benefit to the offender is not an essential element

1 *Subramania Ghanapati*, (1881) 3 Mad. 261.

2 *Muhammad Shah Khan*, (1898) 20 All. 307.

of this offence[1]. Where A personated B at a trial with B's consent, which was given to save himself from the trouble of making an appearance in person before a Magistrate, it was held that A was guilty of an offence under this section, and B was guilty of abetment of the offence[2].

Personation of an imaginary person.—There is a conflict of decisions on the point whether a person commits an offence under this section by personating a purely imaginary person. The Calcutta High Court has held that a person by such personation commits an offence under this section[3]. The Madras High Court, dissenting from the above ruling, has held that it is not enough to show the assumption of a fictitious name; it must also appear that the assumed name was used as a means of falsely representing some other individual[4].

According to the English law, also, such an assumption of an imaginary person does not amount to any offence[5].

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

206. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

The concealment or removal of property contemplated in this section must be to prevent the property from being taken. Where the property is already taken and the removal is subsequent, the offence under this section is not committed[6]. A creditor commits no fraud who anticipates other creditors and obtains a discharge of his debt by the assignment of any property, which has not already been attached by another creditor[7].

Sections 206, 207 and 208 have the effect of rendering criminal all collusive modes by which creditors, or lawful claimants, may be defeated of their just remedies. Sections 421-424 deal with fraudulent transfers.

1 *Suppakon*, (1863) 1 M.H.C. 450; *Kalya Nava Patil*, (1903) 5 Bom. L. R. 138.
2 *Suppakon*, *Ibid.*
3 *Bhitto Kahar*, (1862) 1 I. J. O. S. 123.
4 *Kadar Ravuttan*, (1868) 4 M. H. C. 18.
5 *Martin*, (1879) 5 Q. B. D. 34.
6 *Murli*, (1888) 8 A.W.N. 237.
7 *Appa Mallya*, (1876) Unrep. Cr. C. 110.

207. Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

COMMENT.

Thi ssection deals with the receiver, acceptor, or claimerof property who tries to prevent its seizure as a forfeiture. It punishes the accomplice just as the preceding section punishes the principal offender.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering decree for sum not due.

ILLUSTRATION.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

COMMENT.

This section prevents the abuse of getting some one to file a collusive

suit for recovery of the whole property and suffering a decree to be passed. It punishes persons making fictitious claims in order to secure the property of the defendant against persons to whom he may become indebted in future.

Dishonestly making false claim in Court.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

COMMENT.

This section relates to false and fraudulent claims in a Court of Justice. It is much wider than the last section as it applies to a person who is acting fraudulently or dishonestly. Not only the claim must be false within the knowledge of the person making it, but the object of it must be to defraud, to cause wrongful loss or wrongful gain, to injure or to annoy. The section punishes the making of a false claim. The offence will be complete as soon as a suit is filed. If a person applies for the execution of a decree which has already been executed his act will be an offence under the next section.

Fraudulently obtaining decree for sum not due.

210. Whoever fraudulently obtains[1] a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied[2] or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section is the counterpart to section 208 in respect of fraudulent decrees, just as section 207 is the counterpart to section 206 in respect of fraudulent transfers and conveyances, the object of the Code being to strike both parties alike with the same penalty. This section taken together with section 208 will enable both plaintiff and defendant to a fraudulent or collusive suit or execution to be dealt with alike.

1. 'Obtains.'—The offence is committed when the decree is fraudulently obtained and the fact that the decree has not been set aside, though admissible to prove that there was no fraud, is not a bar to a prosecution under the section[1].

[1] *Molla Fuzla Karim,* (1905) 33 Cal. 193.

2. 'Causes a decree or order to be executed...after it has been satisfied.' —The mere presentation of an application for the execution of a decree already executed will not be sufficient. The accused must have caused the decree to be executed against the opposite party after it had been satisfied[1]. The fact that the satisfaction is of such a nature that the Court executing the decree could not recognize it does not prevent the decree-holder from being convicted of an offence under this section[2].

False charge of offence made with intent to injure.

211. Whoever, with intent to cause injury[1] to any person, institutes or causes to be instituted any criminal proceeding[2] against that person, or falsely charges[3] any person with having committed an offence, knowing that there is no just or lawful ground[4] for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted[5] on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section includes two distinct offences: —

(1) Actually instituting or causing to be instituted false criminal proceedings against a person.

(2) Preferring a false charge against a person.

The first assumes the second, but the second may be committed where no criminal proceedings follow.

The necessary ingredients to constitute either of the above offences are—

(1) The criminal proceedings must be instituted, or the false charge made, with intent to injure.

(2) The criminal proceedings must be instituted, or the false charge must be made, without just or lawful grounds, in other words, it must be made maliciously.

Difference is made in punishment according as the charge relates to offences punishable with imprisonment which may extend to seven years or more or otherwise. But under the second paragraph there should be an

1 *Shama Charan Das* v. *Kasi Naik*, (1896) 23 Cal. 971.

2 *Madhub Chunder Mozumdar* v. *Novodeep Chunder Pundit*, (1888) 16 Cal. 126; *Mutturaman Chetti*, (1881) 4 Mad. 325; *Pillala*, (1895) 9 Mad. 101.

actual institution of criminal proceedings on a false charge. Mere making of a false charge would be punishable under the first paragraph. Two conditions are necessary before the enhanced punishment provided in the second paragraph could be inflicted: (1) proceedings on the false charge should have been actually instituted, and (2) the false charge must be in respect of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards.

Sections 182 and 211.—The Bombay High Court has decided that the criminal law makes a clear distinction between a false charge which falls under s. 211 and false information given to the Police, in which latter case the offence falls under s. 182. A person prosecuting another under s. 182 need not prove malice and want of reasonable and probable cause except so far as they are implied in the act of giving information known to be false, with the knowledge or likelihood that such information would lead a public servant to use his power to the injury or annoyance of the complainant. In an inquiry under s. 211, on the other hand, proof of the absence of just and lawful ground for making the charge is an important element[1]. If the information conveyed to the Police amounts to the institution of criminal proceedings against a defined person or amounts to the falsely charging of a defined person with an offence, then the person giving such information is guilty of an offence under s. 211. In such a case, s. 211 is, and s. 182 is not, the appropriate section under which to frame a charge. Section 182, when read with s. 211, must be understood as referring to cases where the information given to the public servant falls short of amounting to institution of criminal proceedings against a defined person and falls short of amounting to the false charging of a defined person with an offence as defined in the Penal Code[2].

The Calcutta High Court has ruled that a prosecution for a false charge may be under s. 182 or s. 211, but if the false charge was a serious one, the graver s. 211 should be applied and the trial should be full and fair[3]. Where a false charge is made to the Police of a cognizable offence, the offence committed by the person making the charge falls within the meaning of s. 211 and not s. 182[4].

The Madras High Court has held that there is no error in a conviction under s. 182, when the false charge made before the Police was punishable under the final clause of s. 211. The High Court may quash the conviction and sentence for the minor offence and direct a trial before a tribunal having jurisdiction for the graver. Whether it will do so, or not, is a question, not of law, but of expediency on the facts of the particular case[5].

The Allahabad High Court has held that where a specific false charge is made, the proper section, for proceedings to be adopted under, is s 211[6].

[1] Per Ranade, J., in *Raghavendra* v. *Kashinath Bhat*, (1894) 19 Bom. 717, 725.

[2] *Apaya Tatoba Munde*, (1913) 15 Bom. L. R. 574, 2 Bom. Cr. C. 86.

[3] *Sarada Prosad Chatterjee*, (1904) 32 Cal. 180; followed in *Gati Mandal*, (1905) 4 C. L. J. 88.

[4] *Giridhari Naik*, (1901) 5 C.W. N. 727.

[5] (1872) 7 M. H. C. App. v.

[6] *Jugal Kishore*, (1886) 8 All. 382.

Although it is difficult to see what case would arise under s. 211 to which s. 182 could not be applied, yet s. 182 would apply to a case which might not fall under s. 211. The offence under s. 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third person. The offence is complete although the public servant takes no steps towards the institution of such criminal proceedings. There is no restriction imposed by the Penal Code or by the Criminal Procedure Code upon the prosecution of an offence either under s. 182 or s. 211. It appears that it has been left to the discretion of the Court to determine when and under what circumstances prosecution should be proceeded with under ss. 182 and 211[1].

1. 'Intent to cause injury' is an essential part of the offence[2]. The phrase is precisely the same as the English legal term "maliciously."

2. 'Institutes or causes to be instituted any criminal proceeding.'—Under this section 'instituting a criminal proceeding' may be treated as an offence in itself apart from 'falsely charging' a person with having committed an offence. There are two modes in which a person aggrieved may seek to put the criminal law in motion: (1) by giving information to the Police (Criminal Procedure Code, s. 154), and (2) by lodging a complaint before a Magistrate (Criminal Procedure Code, ss. 199, 200). A person who sets the criminal law in motion by making to the Police a false charge in respect of a *cognizable offence* institutes criminal proceedings[3]. But as the Police have power to take any proceedings in *non-cognizable* cases without orders from a Magistrate, a false charge of such offence, made to the Police, is not an institution of criminal proceedings, but merely a false charge[4]. The distinction between cognizable and non-cognizable offences relates to the powers of the Police only, and it will, therefore, seem that the false charge of any offence, whether cognizable or non-cognizable, before a Magistrate, is an institution of criminal proceedings.

3. 'Falsely charges.'—The word 'charges' means something different from 'gives information.' The true test seems to be, does the person who makes the statement which is alleged to constitute the 'charge' do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed? Such object and intention may be inferred from the language of the statement and the circumstances in which it is made[5]. The false charge must be made to a Court, or to an officer who has power to investigate and send it up for trial[6]. It is enough that a false charge is made though no prosecution is instituted thereon[7].

[1] Per Edge, C.J., in *Raghu Tiwari*, (1893) 15 All. 336, 338.

[2] *Gopal Dhanuk*, (1881) 7 Cal. 96.

[3] *Jijibhai Govind*, (1896) 22 Bom. 596; *Karim Buksh*, (1888) 17 Cal. 574, F. B.; *Parahu*, (1883) 5 All. 598; *Nanjunda Rau*, (1896) 20 Mad. 79.

[4] *Karim Buksh*, (1888) 17 Cal. 574, F.B.

[5] *Rayan Kutti*, (1903) 26 Mad. 640, 643.

[6] *Jamoona*, (1881) 6 Cal. 620; *Siran Chetti*, (1909) 32 Mad. 258, overruling *Chinna Ramana Gowd*, (1908) 31 Mad. 506; *Mathura Prasad*, (1917) 39 All. 715.

[7] *Abul Hasan*, (1877) 1 All. 497; *Chenna Malli Gowda*, (1903) 27 Mad. 120.

Bare statement is not a false charge.—A statement to the Police of a suspicion that a particular person has committed an offence is not a charge within the meaning of this section, nor does it amount to the institution of criminal proceedings; and a conviction cannot be had on proof that the suspicion was unfounded[1].

Statement under s. 162, Criminal Procedure Code.—A statement under this section in answer to question put by a Police Officer making an investigation under s. 161, Criminal Procedure Code, cannot be made the basis of a prosecution under this section[2].

4. **'Knowing that there is no just or lawful ground'** is the equivalent of the English technical phrase "without reasonable or probable cause," which means "an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be :

First, an honest belief of the accuser in the guilt of the accused;

Secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion;

Thirdly, such secondly-mentioned belief must be based upon reasonable grounds, that is, such grounds as would lead any fairly cautious man in the defendant's situation so to believe;

Fourthly, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused[3]."

A person may, in good faith, institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him, believing there are good grounds for them, but in neither case has he committed an offence under this section. To constitute this offence it must be shown that the person instituting criminal proceedings knew there was no just or lawful ground for such proceedings[4].

In the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the complainant affords very strong evidence of reasonable and probable cause[5].

5. **'If such criminal proceedings be instituted.'**—There is a divergence of views between the Calcutta and Madras High Courts on the one hand and the Allahabad High Court and the Punjab Chief Court on the other, on the question whether the latter part of this section applies to such cases of complaints to the Police which are disposed of without a formal magisterial

[1] *Bramanund Bhuttacharjee*, (1881) 8 C. L. R. 233; *Karigowda*, (1894) 19 Bom. 51.

[2] *Chinna Ramana Gowd*, (1908) 31 Mad. 506; *Krishna Baipadithaya*, (1909) 20 M.L.J. R. 132.

[3] Per Hawkins, J., in *Hicks* v. *Faulkner*, (1878) 8 Q.B.D. 167, 171.

[4] *Chidda*, (1871) 3 N.W. P. 327.

[5] *Parimi Bapirazu* v. *Bellamkonda*, (1866) 3 M.H.C. 238.

inquiry. A Full Bench of the Calcutta High Court has held that the latter part of this section would apply to such cases where the charge related to the more serious offence[1]. This Full Bench case is followed by the Madras High Court[2]. The test to apply is,—did the person who makes the charge intend to set the criminal law in motion against the person against whom the charge is made[3]?

The Allahabad High Court has, on the other hand, held that to constitute the offence defined in the second paragraph of this section, it is necessary that criminal proceedings should be instituted. Where the offence committed does not go further than the making of a false charge to the Police, the making of such charge does not amount to the institution of criminal proceedings, and the offence committed will fall within the first paragraph, notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph[4].

The Chief Court of the Punjab has held likewise[5].

Vexatious charge.—To bring a vexatious charge is not an offence under this section[6].

Compounding.—The fact that an offence alleged to have been committed was compounded is no conclusive answer to a charge made against the prosecutor under this section[7].

No pending proceedings.—It must be proved that the original proceedings are not *pending* at the time of the offender's trial[8].

The original charge need not have been fully heard and dismissed, it is sufficient if it is not pending[9].

Abetment.—A person cannot be convicted of abetment of a false charge solely on the ground of his having given evidence in support of such charge[10].

Civil remedy.—A person aggrieved by a false charge may, if he choose, sue in a civil Court for damages for malicious prosecution, instead of taking criminal proceedings under this section.

CASES.

Where a man burnt his own house and charged another with the offence, it was held that he had committed an offence under this section and not under s. 195[11]. A false charge of dacoity was made to a Police officer, who referred it to a Magistrate as false, and the Magistrate ordered the charge to be dismissed without taking any action against the parties implicated. The prisoner who preferred the charge was tried under this section. It was held that the person had instituted criminal proceedings within the meaning of the section[12]. A, falsely and with intent to injure, informed the Police that

1 *Karim Buksh*, (1888) 17 Cal. 574, F. B.
2 *Nanjunda Rau*, (1896) 20 Mad. 79.
3 *Mallappa Reddi*, (1903) 27 Mad. 127, 128.
4 *Bisheshar*, (1893) 16 All. 124; *Pitam Rai*, (1882) 5 All. 215.
5 *Sultan*, (1887) P.R. No. 3 of 1888; *Khan Bahadur*, (1888) P.R. No. 26 of 1888.
6 *Tatia Hari*, (1899) 1 Bom. L.R. 11.
7 *Atar Ali*, (1884) 11 Cal. 79.
8 *Salik*, (1877) 1 All. 527.
9 *Subbanna Gaundan*, (1862) 1 M. H. C. 30.
10 *Ram Panda*, (1872) 9 B. L. R. App. 16.
11 *Bhugwan Ahir*, (1867) 8 W.R. 65.
12 *Nanjunda Rau*, (1896) 20 Mad. 79.

B had stolen property in his house. The Police searched B's house, and the imformation proved to be false. It was held that A had instituted criminal proceedings, and that he was therefore guilty of an offence under s. 211 and not under s. 182[1].

False charge should be made to a Court or officer having jurisdiction to investigate.—A woman appeared before the Station Staff Officer and accused a Non-Commissioned Officer of rape and after a military enquiry, the military authority held that the charge was false and directed the complainant to be prosecuted under this section. The conviction was set aside, as the false charge was not made to a Court having jurisdiction[2]. Where the petitioner laid a charge of mischief by fire at the *thana*, which was reported to be false, and the District Magistrate, upon the receipt of a report to the same effect from a Deputy Magistrate, to whom he had sent the case for a judicial inquiry, passed an order to prosecute the petitioner, it was held that the order of the District Magistrate was bad, as the matter of the false charge had not come before him in the course of judicial proceedings[3].

Harbouring offender—

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with transportation for life, or with imprisonment.

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year and, not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

1. *Muthra* v. *Roora*, (1870) P. R. No. 16 of 1870.
2. *Jamoona*, (1881) 6 Cal. 620.
3. *Haibat Khan*, (1905) 33 Cal. 30.

"Offence" in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

ILLUSTRATION.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

COMMENT.

This section applies to the harbouring of persons who have actually committed some offence under the Penal Code or an offence under some special or local law, when the thing punishable under such special or local law is punishable with imprisonment for a term of six months or upwards. It supposes that some offence has actually been committed, and that the harbourer gives refuge to one whom he knows or has reason to believe to be the offender with the intention of screening him from legal punishment. It does not apply to the harbouring of persons, not being criminals, who merely abscond to avoid or delay a judicial investigation.

The section deals with that class of offenders who are known as 'accessories after the fact' under the English law. An 'accessory after the fact' is one who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon.

Exception.—The exception only extends to the cases where harbour is afforded by a wife or husband. No other relationship can excuse the wilful receipt or assistance of felons; a father cannot assist his child, a child his parent, a brother his brother, a master his servant, a servant his master.

Taking gift, etc., to screen an offender from punishment—

213. Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence,

or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with transportation for life, or with imprisonment.

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

COMMENT.

The compounding of a crime, by some agreement not to bring the criminal to justice if the property is restored or a pecuniary or other gratification is given, is the offence punished by this and the following section. This section does not apply where the compounding of an offence is legal. It is the duty of every State to punish criminals. No individual has, therefore, a right to compound a crime because he himself is injured and no one else.

This section is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence, and not when there is merely a suspicion of his having committed some offence[1].

Offering gift or restoration of property in consideration of screening offender—

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

[1] *Girish Myte*, (1896) 23 Cal. 420; *Sanalal Lalubhai*, (1913) 15 Bom. L. R. 694, 2 Bom. Cr. C. 101.

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if a capital offence;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine:

if punishable with transportation for life, or with imprisonment.

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

COMMENT.

The last section punished the receiver of a gift in consideration of compromising an offence, whereas this section punishes the offerer of the gift.

The section pre-supposes the actual commission of an offence or the guilt of the persons screened from punishment. It is not the intention of the Legislature to punish the giving of gratifications, under a delusion that an offence had been committed or that a person was guilty of such offence. The intention is to discourage malpractices, when offences have really been committed, or when persons really guilty are screened, and not to ensure general veracity on the part of the public in regard to imaginary offences or offenders.

This section includes the offer of a bribe by the person who has committed the offence that it is desired to screen[1].

Section 345 (1) of the Criminal Procedure Code enumerates the offences that can be lawfully componnded.

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property of which he shall

Taking gift to help to recover stolen property, etc.

[1] *Karuppannen*, (1882) 1 Weir 194.

have been deprived by any offence punishable under this Code[2], shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section is intended to apply to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence[1].

1. 'Takes or agrees or consents to take.'—These words imply that the person taking the gratification and the person giving it have agreed not only as to the object for which the gratification is to be given, but also as to the shape or form the gratification is to take. If a person has actually taken a gratification from another, it must be assumed that he agreed to take, and the other to give it in that particular form or shape; but where the gratification has not actually passed and there is a disagreement as to the form or shape that the gratification is to take the idea of agreement or consent is negatived. Thus where two persons offered to secure the return of bullocks stolen from a third person for Rs. 30, and the third person refused but offered Rs. 15, which offer was rejected by the two persons, it was held that they had committed no offence[2].

2. 'Deprived by any offence punishable under the Code.'—The act by which the property is deprived must be the subject of an offence punishable under the Penal Code. A person lost a cow from the grazing ground. He heard that the cow was with the accused. The accused took Rs. 12 from the owner of the cow and promised to restore it in ten days. Subsequently he refused to return either the money or the cow. It was held that no offence under this section was committed[3].

Harbouring offender who has escaped from custody or whose apprehension has been ordered—

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours

1 *Muhammad Ali*, (1900) 23 All. 81.

2 *Chittar*, (1898) 20 All. 389.

3 *Sharfa*, (1914) P. R. No. 9 of 1915.

or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence;

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with transportation for life, or with imprisonment.

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of British India, which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

COMMENT.

This section should be compared with s. 212. Section 212 deals with the offence of harbouring an offender who having committed an offence absconds. This section deals with harbouring an offender who has escaped from custody after being actually convicted or charged with the offence, or whose

apprehension has been ordered; the latter offence is in the eye of the law more aggravated, and a heavier punishment is, therefore, awarded for it. It is thus an aggravated form of the offence punishable under s. 212.

Penalty for harbouring robbers or dacoits.

216-A. Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

COMMENT.

This section enables the Court to inflict enhanced punishment where the persons harboured are robbers or dacoits or where they intended to commit robbery or dacoity. An offence under this section will also be an offence under s. 212, but in the case of robbers or dacoits this section is the proper one to apply.

Definition of 'harbour' in sections 212, 216 and 216-A.

216-B. In sections 212, 216 and 216-A, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person in any way to evade apprehension.

COMMENT.

The section defines the word 'harbour' used in ss. 212, 216 and 216-A. Acts which render a person an accessory after the fact at common law are included in this definition.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending there-

Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

by to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section and the three following sections deal with disobedience on the part of public servants in respect of official duty.

This section punishes intentional disobedience of any direction of law on the part of a public servant to save a person from punishment. It is not necessary to show that, in point of fact, the person so intended to be saved had committed an offence, or was justly liable to legal punishment. A public servant charged under this section is equally liable to be punished, although the intention which he had of saving any person from legal punishment was founded upon a mistaken belief as to that person's liability to punishment[1].

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

218. Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

This section deals with the intentional preparation by the public servant

[1] *Amiruddeen*, (1878) 3 Cal. 412, 413.

of a false record with the object of saving or injuring any person or property. The correctness of record is of the highest importance both to the State and to the public. The intention with which the public servant does the act mentioned in the section is an essential ingredient of the offence punishable under the section.

It is not necessary that the incorrect document should be submitted to another person, or be otherwise used by the writer.

A public servant commits the offence punishable under this section if the person whom he intends to save from legal punishment is himself[1].

Actual commission of an offence not necessary.—The actual guilt or innocence of the alleged offender is immaterial if the accused believes him guilty and intends to screen him[2].

CASES.

Public servant framing incorrect record to save a person from legal punishment.—A Superintendent of Police gave a warrant under the Gambling Act to D, a Sub-Inspector, to arrest persons found gambling in a certain house. In order to save two persons from legal punishment for having committed an offence under the Gambling Act in that house, D framed a first information and a special diary incorrectly. It was held that he was properly charged with, and found guilty of, having committed an offence under this section[3]. A report of the commission of a dacoity was made at a *thana*. The Police Officer in charge of the *thana* took down the report which was made to him but subsequently destroyed the report and framed another and a false report of the commission of a totally different offence to which he obtained the signature of the complainant, and which he endeavoured to pass off as the original and correct report made to him by the complainant. It was held that the Police Officer was guilty of offences punishable under ss. 204 and 218[4]. Where it was proved that the prisoner's intention in making a false report was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, it was held that he had committed this offence[5].

Public servant in judicial proceeding corruptly making report, etc., contrary to law.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

[1] *Nand Kishore*, (1897) 19 All. 305, overruling *Gauri Shankar*, (1883) 6 All. 42.

[2] *Hurdut Surma*, (1867) 8 W. R. 68.

[3] *Deodhar Singh*, (1899) 27 Cal. 144.

[4] *Muhammad Shah Khan*, (1898) 20 All. 307.

[5] *Girdhari Lal*, (1886) 8 All. 653.

COMMENT.

This section should be read in conjunction with s. 77. It contemplates some wilful excess of authority, in other words, a guilty knowledge superadded to an illegal act. This section and the following one deal with corrupt or malicious exercise of the power vested in a public servant for a particular purpose.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT.

This section is a further extension of the principle laid down in the preceding section. It is general in its application whereas the last section applied to Judicial Officers. It is intended to prevent illegal commitments for trial or illegal confinement.

Intentional omission to apprehend on the part of public servant bound to apprehend.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended

for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

COMMENT.

Sections 221, 222 and 223 provide for intentional omission to apprehend, or negligently suffering the escape of, offenders.

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, or lawfully committed to custody intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

with transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life or to transportation or penal servitude or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both,

if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, or if the person was lawfully committed to custody.

COMMENT.

This section is similar to the last section with the exception that the person to be apprehended has already been convicted or committed for an offence. It is thus an aggravated form of the offence made punishable by the last section.

Escape from confinement or custody negligently suffered by public servant.

223. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section further extends the principle laid down in the two preceding sections. It punishes a public servant who *negligently* suffers any person charged with an offence to escape from confinement. The last two sections dealt with *intentional omission* to apprehend such person.

Unless the custody is lawful no offence under this section is committed. If a public servant has no right to keep a person in custody he will not be guilty of allowing that person to escape[1].

This section applies only to cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested under civil process[2]. The latter cases would come under s. 225-A.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[1] *Debi*, (1907) 29 All. 377. [2] *Tafaullah*, (1885) 12 Cal. 190.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

COMMENT.

This and the section following relate to resistance or illegal obstruction offered to the lawful apprehension of any person. Sections 221-223 punish public servants who fail to apprehend or confine persons liable to be apprehended or confined. This section punishes the persons who offer resistance or obstruction to their lawful apprehension. It deals with (1) resistance or illegal obstruction by a person to his lawful apprehension; and (2) escape or attempt to escape by a person from lawful custody for the offence with which he is charged or of which he has been convicted.

'Escape from custody in which he is lawfully detained for any such offence.'—Escape must be from the custody in which the person escaping has been detained legally. A person of the same name as the offender was arrested, tried and acquitted. Whilst under arrest the accused escaped from custody. It was held that he was not liable to conviction under this section because he was not lawfully detained for any offence[1]. Escape from a custody by a thief, who had been caught in the very act of stealing by a private person, at a time when the thief was being sent to the nearest Police Station in custody of a person who had not witnessed the offence, was held to be an offence under this section[2]. Where a person having been legally arrested was subsequently left unguarded and escaped, he was held guilty under this section[3].

Police officer should show the authority under which he is acting.—The Police officer making an arrest should show the person arrested the authority under which he is acting[4].

Resistance or obstruction to lawful apprehension of another person.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable

[1] *Ganga Charan Singh*, (1893) 21 Cal. 337.

[2] *Potadu*, (1818) 11 Mad. 480; *Fakira*, (1893) 17 Mad. 103.

[3] *Muppan*, (1895) 18 Mad. 401.

[4] *Basant Lall*, (1900) 27 Cal. 320.

to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended, or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

COMMENT.

Persons who offer resistance or illegal obstruction to the apprehension of other persons who have committed offences are punishable under this section. The last section punished the offenders themselves. Section 130 deals with rescuing a prisoner of State or war, and s. 186, with rescuing in any other case.

'Rescue' is the act of forcibly freeing a person from custody against the will of those who have him in custody.

The act for which the person rescued is detained must amount to an offence under the Code. Thus an escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour[1] or an escape from arrest under s. 55, Criminal Procedure Code[2], will not fall under this section.

1 *Shasti Churn Napit*, (1882) 8 Cal. 331.

2 *Kandhaia*, (1884) 7 All. 67.

225-A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for.

(*a*) if he does so intentionally, with imprisonment of either description for a term, which may extend to three years, or with fine, or with both; and

(*b*) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section punishes intentional or negligent omission to apprehend on the part of a public servant not coming within the purview of s. 221, 222 or 223.

225-B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

COMMENT.

This section is intended to meet cases not covered by s. 224 or s. 225. Under s. 225 a person escaping from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour can not be punished, under this section he can be.

There must be an overt act of resistance or obstruction. If a person run away to avoid an arrest his act does not amount to resistance or obstruction.

CASES.

Resistance to an arrest without warrant justifiable.—An arrest by a Police Officer, without notifying the substance of the warrant to the person against whom the warrant is issued, as required by s. 80 of the Criminal Procedure Code, is not a lawful arrest, and resistance to such an arrest is no offence under this section[1].

Resistance to an improper execution of warrant justifiable.—It is illegal to convict a person under ss. 225-B and 353 when the warrant attempted to be executed was addressed to the person with a wrong description to which the accused did not answer[2], or when it was executed by an incompetent person[3], or when it was illegal owing to want of the seal of the Court[4].

Escape from custody.—A peon who arrested the accused under a civil warrant made him sleep by his side in a house after nightfall. The accused escaped while the peon was asleep. It was held that the accused was liable under this section as the fact that the peon went to sleep did not in any way put an end to his custody, or affect the accused's duty to submit to the judgment of the law[5].

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Unlawful return from transportation.

COMMENT.

This section punishes the criminal who is lawfully transported but who runs away from the place of transportation before the expiry of the term of transportation.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Violation of condition of remission of punishment.

1 *Satish Chandra Rai* v. *Jodu Nandan Singh*, (1899) 26 Cal. 748.
2 *Debi Singh*, (1901) 28 Cal. 399.
3 *Durga Charan Jemadar*, (1900) 27 Cal. 457.
4 *Mahajan Sheikh*, (1914) 42 Cal. 708.
5 *Ramaswami Konan*, (1908) 31 Mad. 271.

COMMENT.

This section deals with those cases in which remission of punishment is made conditional by Government under s. 401 of the Code of Criminal Procedure.

Intentional insult or interruption to public servant sitting in judicial proceeding.

228. Whoever, intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

The object of this section is to punish a person who intentionally insults in any way the Court administering justice. It is to preserve the prestige and dignity of the Court that this section is enacted. It lays down the highest sentence that could be inflicted for contempt of Court.

Ingredients.—The essentials of the section are—

1. There must be (*a*) intentional insult or (*b*) interruption to any public servant.
2. The public servant must have been sitting in any stage of a judicial proceeding.

The whole sitting of a Court for the disposal of judicial work from the opening to the rising of the Court is a judicial proceeding, and the necessary interval between the conclusion of one case and the opening of another is a stage in a judicial proceeding[1].

Acts such as rude and contumelious behaviour, obstinacy, perverseness, prevarication, or refusal to answer any lawful question ; breach of the peace or any wilful disturbance whatever, will amount to a contempt of Court.

If the offence of contempt of Court is summarily dealt with under s. 480 of the Criminal Procedure Code, the maximum fine that can be imposed is Rs. 200.

CASES.

Contempt.—A person persisting in putting irrelevant and vexatious questions to a witness after warning[2] ; and a person sentenced to two hours' imprisonment and ordered to be kept in custody insulting the Judge in the grossest manner[3] ; were all held guilty of contempt of Court under this section.

Refusal to answer a question.—Prevarication by a witness and refusal to answer a question amount to intentional interruption within the meaning of this section[4].

[1] *Salig Ram*, (1897) P. R. No. 16 of 1897.

[2] *Azeemoola*, (1867) P. R. No. 44 of 1867.

[3] *Venkatasami*, (1891) 15 Mad. 131.

[4] *Jaimal Shravan*, (1873) 10 B. H. C. 69 ; *Gopi Chand*, (1917) P. R. No. 14 of 1918.

No contempt.—A person leaving the Court when ordered to remain[1] or making signs from outside to a prisoner on his trial[2]; a person listening to evidence after being told to leave the Court[3]; a person using vulgar language for the purpose of emphasis[4]; and a person walking out of the Court without answering the question whether he had any witness[5], were held to have committed no offence under this section.

Personation of a juror or assessor.

229. Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section is intended to punish false personation of a juror or an assessor. It deals with two classes of cases.—

(1) Where the accused had guilty knowledge before he was returned, *i. e.*, got himself enlisted as a juror or assessor.

(2) Where he had such knowledge after he was returned.

Section 278, Criminal Procedure Code, enumerates the persons not entitled to serve as jurors or assessors. As to choosing a jury, see s. 276, Criminal Procedure Code: as to choosing of assessors, see s. 321.

Five sections provide for false personation—

1. Section 140 punishes false personation of a soldier.
2. Section 170 punishes personating a public servant.
3. Section 171 punishes wearing a garb or carrying a token used by a public servant.
4. Section 205 punishes false personation for the purpose of an act or proceeding in a suit or prosecution.
5. Section 229 punishes personation of a juror or an assessor.

[1] (1870) 1 Weir 215.
[2] (1870) 1 Weir 214.
[3] *Papa Naiken*, (1882) 1 Weir 217.
[4] (1880) 1 Weir 216.
[5] *Abdul Rahiman*, (1899) 1 Weir 218.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

The offences described in this Chapter relate to (I) Coins, and (II) Stamps.

(I) **Coins**—

The offences relating to coin may be classified into three divisions:—(1) counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
   (1) Counterfeiting coins (ss. 231, 232).
   (2) Making or selling instrument for counterfeiting (ss. 233, 234).
   (3) Possession of instrument for counterfeiting (s. 235).
   (4) Abetting in British India the counterfeiting of coin out of India (s. 236).
   (5) Importing or exporting of counterfeit coin (ss. 237, 238).
   (6) Delivering counterfeit coin knowing it to be so (ss. 239, 240).
   (7) Delivering counterfeit coin not known to be so when first possessed (s. 241).
   (8) Possession of counterfeit coin knowing it to be so (ss. 242, 243).
2. Alteration—
   (1) Diminishing the weight or altering the composition of any coin (ss. 246, 47).
   (2) Altering appearance of any coin to pass it off as a different coin (ss. 248, 249).
   (3) Delivering coin possessed with the knowledge that it is altered (ss. 250, 251).
   (4) Possessing altered coin knowing it to be so (ss. 252, 253).
   (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (s. 254).
3. Acts of mint employees—
   (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (s. 244).
   (2) Unlawfully taking from a mint any coining instrument (s. 245).

(II) **Government Stamps**—

1. Connterfeiting a stamp (s. 255).
2. Possession of an instrument for counterfeiting a stamp (s. 256).
3. Making or selling instrument for counterfeiting a stamp (s. 257).
4. Sale of a counterfeit stamp (s. 258).
5. Possession of a counterfeit stamp (s. 259).
6. Using as genuine a stamp known as counterfeit (s. 260).
7. Effacing any writing from a substance bearing a stamp or removing from a document stamp used for it, with intent to cause loss to Government (s. 261).
8. Using a stamp koown to have been before used (s. 262).
9. Erasure of mark denoting that a stamp has been used (s. 263).
10. Making, uttering, or dealing in, or using for postal purpose, fictitious stamp: or possessing any fictitious stamp; or makin or possessing any instrument for manufacturing fictitious stamps (s. 263-A).

230. Coin is metal used for the time being as money and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

"Coin" defined.

Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the, Queen's coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

Queen's coin.

ILLUSTRATIONS.

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Medals are not coin, inasmuch as they are not intended to be used as money.

(*d*) The coin denominated as the Company's rupee is the Queen's coin.

(*e*) The "Farukhabad" rupee, which was formerly used as money under the authority of the Government of India, is Queen's coin although it is no longer so used.

COMMENT.

The definition requires that a coin must be a metal *used for the time being as money*. Old coin not used as money are not coins under this definition. A coin of the time of Akbar[1] or Shahjahan[2] cannot, therefore, be deemed to be a coin.

Similarly a medal is not a coin, and if a person represents to an ignorant person a medal as being money he cannot be convicted of passing a counterfeit coin[3]. But a person counterfeiting Kuldar and Jeypur gold mohars will be guilty of counterfeiting coin as they had a current value attached to them as coin[4].

Legal tender not necessary.—Coin need not be a legal tender receivable at a value in rupee fixed by law. Gold mohars which although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money[5]." The test of whether a particular piece of metal is money or not is the possibility of taking it into market and obtaining goods of any kind in exchange for it. For this, its

1 *Bapu Yadav*, (1874) 11 B. H. C. 172.

2 *Khushali*, (1906) 29 All. 141.

3 (1863) 1 Weir 219.

4 *Kunj Beharee*, (1873) 5 N. W. P. 187.

5 *Kunj Beharee*, *ibid.*

value must be ascertained and widely known ; that it is known to persons of special skill or information is not sufficient[1].

It has been held that Murshidabad rupees[2] stand on the same footing as 'Farukhabad' rupees which are King's coin although no longer so used.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting coin.

Explanation.—A person commits this offence who intending to practice deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

COMMENT.

It is not necessary under this section that the counterfeit coin should be made with the primary intention of its being passed as genuine ; it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such[3]. The accused, at the request of some Nepalese, made for them in German silver a number of imitations of a current Nepalese coin. The coins were not intended originally to be passed as genuine coins, for it was stipulated that they should be made with hooks attached to them ; but this was not done and the coins were handed over plain. It was held that the accused was guilty under this section[4].

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting Queen's coin.

COMMENT.

The Code provides heavier punishment in cases of offences relating to King's coin than those relating to foreign coins. The framers of the draft Code say : "We have proposed that the Government of India should follow the general practice of Governments in punishing more severely the counterfeiting of its own coin than the counterfeiting of foreign coin. It appears to us peculiarly advisable, under the present circumstances of India, to make this distinction. It is much to be wished that the Company's currency may

1 *Bapu Yadav*, (1874) 11 B. H. C. 172.

2 *Deni*, (1905) 28 All. 62.

3 *Qadir Bakhsh*, (1907) 30 All. 93 : *Amrit Sonar*, (1919) 4 P. L. J. 525.

4 *Ibid.*

supersede the numerous coinages which are issued from a crowd of mints in the dominions of the petty princes of India. It has appeared to us that this object may be in some degree promoted by the law as we have framed it. That coinage, the purity of which is guarded by the most rigorous penalties, is likely to be the most pure; and that coinage which is likely to be the most pure will be the most readily taken in the course of business[1]."

'Counterfeiting' means causing one thing to resemble another. Where, therefore, a person removed the ring from a coin which had been used to form part of a necklace or other ornament, and worked up the face of the coin where the ring had been it not being shown that any material part of the coin had at any time been removed, it was held that he was not guilty under this section[2].

Making or selling instrument for counterfeiting coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

In this as well as in the following section mere acts of preparation towards the offence of coining are made substantive offences, such as the making of dies or other instruments used in the manufacture of coin.

Making or selling instrument for counterfeiting Queen's coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

'Possession' connotes the intention to exercise power or control over the object possessed and therefore necessarily implies that the possessor has been conscious of the possibility of exercising that power or control.

1 Note 1.

2 *Mahammad Husain*, (1901) 23 All. 420.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Possession of instrument or material for the purpose of using the same for counterfeiting coin;

and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years. and shall also be liable to fine.

if Queen's coin.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Abetting in India the counterfeiting out of India of coin.

COMMENT.

Any person in India, whether a British subject or a foreigner, who supplies instruments or materials for the purpose of counterfeiting any coin, or assists in any other way, is punishable under this section. Abetment in British India must be complete.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeit coin.

COMMENT.

The offence under this and the following section consists in an import or export, whether by sea or land, of any coin known by the importer, or which he has reason to believe, to be counterfeit.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment

Import or export of counterfeits of Queen's coin.

of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is counterfeit.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

COMMENT.

This section is directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner.

Three classes of offences are created by ss. 239 to 243.

(1) Delivery to another of coin, possessed with the knowledge that it is counterfeit (ss. 239, 240).

(2) Delivery to another of coin as genuine, which, when *first* possessed, the deliverer did not know to be counterfeit (s. 241).

(3) Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof (ss. 242, 243).

Delivery of Queen's coin possessed with knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The offence under this section is an aggravated form of the offence described in the last.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit but which he did not know to be counterfeit

at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

ILLUSTRATION.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under s. 239 or 240, as the case may be.

COMMENT.

This section applies to a casual utterer of base coins. Section 239 deals with professional utterers.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

Mere possession of a counterfeit coin is an offence under this and the following section, even though no attempt is made to pass it off provided it was kept for a fraudulent purpose and was originally obtained with guilty knowledge. Possession must be with intent to defraud.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

The object of this section is to secure purity of the coinage and its exact conformity to the legal standard against the act or omission of persons employed in mints. The law has fixed the weight and composition of various coins and has declared in what cases they shall be a legal tender.

Unlawfully taking coining instrument from mint.

245 Whoever, without lawful authority, takes out of any mint, lawfully established in British India. any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of coin with intent that it shall pass as coin of different description.

COMMENT.

This section refers to any operation which alters the appearance of a coin with the intention that the said coin shall pass as a coin of a different description, *e. g.*, guilding, silvering. If the weight of the coin is diminished, either s. 246 or s. 247 will apply.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of coin possessed with knowledge that it is altered.

COMMENT.

This and the following sections are intended to punish persons who are traders in spurious or altered coins. They correspond to ss. 239 and 240. There must be both possession with knowledge and fraudulent delivery.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has

Delivery of Queen's coin possessed with knowledge that it is altered.

been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person, to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of coin by person who knew it to be altered when he became possessed thereof.

252. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

Possession of debased or altered coin by the professional dealer, with fraudulent intention, is made punishable by this section. This and the next section resemble ss. 242 and 243. Under ss. 250 and 251 the accused is punished for uttering, under this section and the next he is punished for possessing a coin in respect of which the offence defined in either s. 246 or 247 has been committed.

Possession of Queen's coin by person who knew it to be altered when he became possessed thereof.

253. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.

COMMENT.

Section 241 corresponds to this section. Where possession is acquired innocently but on subsequent knowledge that the coin is counterfeit if a person passes it off or attempts to pass it off as a genuine coin he will be punished under this section.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting Government stamp.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

COMMENT.

This and the remaining sections of the Chapter deal with offences relating to Government stamps. These stamps are impressions upon paper, parchment, or any material used for writing made by Government mostly for the purpose of revenue.

An obliterated stamp can be a stamp in the ordinary use of the English language. A stamp does not cease to be a stamp because it is cancelled. A person selling a forged stamp although it bears a cancellation mark commits an offence of selling forged stamps[1].

[1] *Lowden*, [1914] 1 K. B. 144.

Having possession of instrument or material for counterfeiting Government stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section resembles s. 235.

Making or selling instrument for counterfeiting Government stamp.

257. Whoever makes or performs any part of the process of making, or buys or sells or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section corresponds to s. 234.

Sale of counterfeit Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section resembles s. 239.

Having possession of counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either

description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section corresponds to s. 243.

Using as genuine a Government stamp known to be counterfeit.

260. Whoever uses as genuine any stamp, knowing it to be counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT.

This section corresponds to s. 254.

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

261. Whoever fraudulently, or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document, a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

This section may be compared with ss. 246 and 248. It punishes (1 the effacing of a writing from a stamp, and (2) the removing of a stamp fro a document.

Using Government stamp known to have been before used.

262. Whoever fraudulently, or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

Under this section the fraudulent use of a stamp already used is made punishable.

Erasure of mark denoting that stamp has been used.

263. Whoever fraudulently, or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

This section punishes (1) erasure or removal of a mark denoting that a stamp has been used, (2) knowingly possessing any such stamp, and (3) selling or disposing of any such stamp.

Prohibition of fictitious stamps.

263-A. (1) Whoever—

(*a*) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(*b*) has in his possession, without lawful excuse, any fictitious stamp, or

(*c*) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both

inclusive, the word "Government," when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.

COMMENT.

This section makes it an offence to manufacture fictitious stamps, which are defined to be stamps purporting to be used for purposes of postage whether by the British or any foreign Government. It was enacted for the purpose of stopping the use of fictitious stamps on letters coming from abroad.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

Fraudulent use of false instrument for weighing.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

Intention is an essential part of the offence under this section. The word 'false' in this and the following sections means different from the instrument, weight, or measure, which the offender and the person defrauded have fixed upon, expressly or by implication, with reference to their mutual dealings.

Fraudulent use of false weight or measure.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

Section 264 punishes one who uses false balance; this section punishes one who uses a false weight or measure.

CASE.

The accused who sold liquor, measuring it with a glass which was not

the prescribed measure and of which he falsely misrepresented the capacity, was held to have committed an offence not under this section but under s. 415[1].

Being in possession of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

This section punishes a person who is in possession of false weight or measure just as ss. 235, 239 and 240 punish a person who is in possession of a counterfeit coin and s. 259 punishes a person who is in possession of a counterfeit stamp.

The mere possession of false weights or measures will not in itself raise any strong presumption of fraud, as they may have been put away so as not to be used. It is necessary to show that the accused knew the scales to be false and intended to use them fraudulently[2]. Thus, in a case the mere possession of the scales, or evidence of their use, with a string not accurately tied at the centre of the beam, so that one scale out-weighed the other, but which could be shifted at any time, and might sometimes have been accurately tied, was held not of itself to be sufficient evidence of fraud[3]. The fraudulent intent will be shown by the place where they are found. Suppose a false balance was found fixed to a tradesman's counter where he was accustomed to sell his goods, and there was no other in the place. There would be, in this case, the strongest possible presumption that the possession was not innocent. On the other hand, suppose he had true balances in his shop, but an untrue one stowed away in an attic with a lot of lumber, there the presumption would be against fraud.

But the mere possession of the false instrument, if such possession cannot be satisfactorily explained and accounted for, is sufficient ground for presuming an intention to use it fraudulently.

Making or selling false weight or measure.

267. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of

[1] *Nurodin*, (1888) Cr. R. No. 36 of 1888, Unrep. Cr. C. 386.

[2] *Hamirmal*, (1890) Cr. R. No. 36 of 1890, Unrep. Cr. C. 514.

[3] *Ibid.*

either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

The object of this section is to prevent the circulation of false scales, weights or measures. It punishes a person who makes, sells, or disposes of a false balance, weights or measures.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

The following specific instances of nuisance are dealt with in this Chapter—

1. Act likely to spread infection (ss. 269-271).
2. Adulteration of food or drink (ss. 272, 273).
3. Adulteration of drugs (ss. 274-276).
4. Fouling water of a public spring or reservoir (s. 277).
5. Making atmosphere noxious to health (s. 278).
6. Rash driving or riding (s. 279).
7. Rash navigation (ss. 280, 282).
8. Exhibition of false light-mark or buoy (s. 281).
9. Danger or obstruction in a public way or line of navigation (s. 283).
10. Negligence in respect of poison (s. 284), fire (s. 285), or explosive substances (s. 286).
11. Negligence in respect of machinery (s. 287), building (s. 288), or animals (s. 289).
12. Selling obscene literature and pictures (ss. 292, 293), or doing obscene acts (s. 294).
13. Keeping a lottery office (s. 294-A).

268. A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Public nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

COMMENT.

Nuisance is of two kinds : (1) public, and (2) private.

(1) Public nuisance or common nuisance is an offence against the public, either by doing a thing which tends to the annoyance of the whole community in general, or by neglecting to do anything which the common good requires. It is an act affecting the public at large, or some considerable portion of them; and it must interfere with rights which members of the community might otherwise enjoy. It depends in a great measure upon the number of houses and the concourse of people in the vicinity; and the annoyance or neglect must be of a real and substantial nature. Acts which seriously interfere with the health, safety, comfort, or convenience of the public generally, or which tend to degrade public morals, have always been considered public nuisances. A brew-house, glass-house, or swine-yard, may be a public nuisance if it is shown that the trade is such as to render the enjoyment of life and property uncomfortable. Erecting gunpowder mills or keeping gunpowder magazines near a town, keeping large quantities of naphtha near dwelling houses, blasting stone near a highway, keeping large quantities of materials for making fireworks near a street, working rice-husking machine at night in a residential quarter of a city[1], and keeping disorderly houses, *e. g.*, disorderly inns, bawdy houses, gaming houses, and committing acts of indecency in public places have been held to be public nuisances.

It is not a *sine qua non* that the annoyance should injuriously affect every member of the public within its range of operation. It is sufficient that it should affect people in general who dwell in the vicinity[2].

Public nuisance can only be the subject of one indictment, otherwise a party might be ruined by a million suits. An indictment will fail if the nuisance complained of only affects one or a few individuals.

As to when an individual can bring a civil action in respect of a public nuisance, see "The Law of Torts."

(2) Private nuisance is defined to be anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. It is in the quantum of annoyance that private nuisance differs from public. It cannot be the subject of an indictment, but may be the ground of a civil action for damages or an injunction, or both[3].

Ingredients.—This section requires the following essentials :—

1. Doing of any act or guilty of an illegal omission.

2. Such act or omission (i) must cause any common injury, danger, or annoyance—

   (*a*) to the public, or

   (*b*) to the people in general who dwell or occupy property in the vicinity; or

[1] *Phiraya Mal*, (1904) P. R. No. 9 of 1904.

[2] *Ibid.*

[3] *Vide* The Law of Torts, Ch. XX, by the authors of this book.

(ii) must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Nuisance not excused on the ground of 'convenience.'—It is immaterial whether the act complained of is convenient to a larger number of the public than it inconveniences, but the fact that the act complained of facilitates the lawful exercise of their rights by part of the public may show that it is not a nuisance to any of the public[1]. But in judging whether a thing is a public nuisance or not, the public good it does, may, in some cases, where the public health is not concerned, be taken into consideration to see if it outweighs the public annoyance[2].

No prescriptive right can be acquired.—No prescriptive right can be acquired to maintain, and no length of time can legalize a public nuisance[3]. Though twenty years' user may bind the right of an individual, yet the public have a right to demand the suppression of a nuisance, even of a longer standing[4].

Liability of the master for the acts of his servants.—The owner of works, carried on for his benefit by his agents, is liable to be indicted for a public nuisance caused by acts of his workmen in carrying on the works, though done by them without his knowledge and contrary to his general orders[5].

Civil and criminal liability.—Nuisances punishable under the Code may be made the subject of a civil action before or without prosecution. A person aggrieved by the erection of a building in a public thoroughfare, or on the waste land of a town or village, may institute a suit in a civil Court for its removal, instead of preferring a complaint to the Magistrate[6].

CASES.

Obstructing a public way.—Persons who placed a bamboo stockade across a tidal navigable river for the purpose of fishing, although they left in such stockade a narrow opening for the passage of boats, which passage was kept closed except on the actual passage of a boat, were held to be guilty of public nuisance[7]. A person who appropriated any part of a street by building over it[8], and a person who filled up a portion of a ditch or drain which formed part of a public way and which belonged to the public[9], were held to have committed this offence.

Gambling.—A common gaming-house to which every one who chooses to pay is able to go is necessarily a nuisance and no evidence of any actual annoyance to the public is in such a case required. But a person who admits gamblers into his house, and every person who games therein, is not guilty

1 Stephen's Dig. of Cr. L., Art. 197.

2 Russell, 734.

3 *Municipal Commissioners for the Suburbs of Calcutta* v. *Mahomed Ali*, (1870) 14 W. R. 67, 7 B.L.R. 499.

4 *Weld* v. *Hornby*, (1806) 7 East 195, 199.

5 *Stephens*, (1866) L. R. 1 Q. B. 702.

6 *Jina Ranchhod* v. *Jodha Ghella*, (1863) 1 B. H. C. 1.

7 *Umesh Chandra Kar*, (1884) 14 Cal. 656.

8 *Virappa Chetti*, (1896) 20 Mad. 433.

9 *Roopnarain Dutt*, (1872) 18 W. R. 38.

of this offence in the absence of such evidence[1]. Where a lessee of a house permitted disorderly people to use it for gambling and thereby caused annoyance to the public, he was convicted of this offence[2].

The Calcutta High Court has, however, ruled that gambling is not an offence such as is defined in this section. Where, therefore, certain persons were found to have gambled at a place where the Gambling Act was not in force and convicted under s. 290, it was held that the conviction was bad[3].

Offending the sentiments of a class is no nuisance.—Where a person cut up meat on his *verandah* and exposed it to the sight of persons passing along the road, among whom were some Jains, whose temple was close by[4]; where a person kept a shop open for the sale of meat though the sight of meat was offensive to the sentiments of a section of the public[5]; and where Mahomedans for a religious purpose killed and cut up two cows before sunrise in a private compound partly visible from a public road[6], no offence was held to have been committed. But it would be a public nuisance if a person wilfully slaughtered cattle in a public street so that the groans and blood of the poor beasts were heard and seen by passers-by.

Negligent act likely to spread infection of disease dangerous to life.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.

This section is framed in order to prevent people from doing acts which are likely to spread infectious diseases amongst the people. Welfare of the society is the primary duty of every civilised state.

CASES.

Syphilis.—Where a prostitute, who was suffering from syphilis encouraged and permitted a man, whom she had assured that she was healthy, to have sexual intercourse with her and thus communicated the disease to him, it was held that she was not guilty under this section as the complainant was himself a responsible person and himself generally an accomplice[7]. This decision does not seem to be sound as the complainant cannot be deemed to be an accomplice, he being unaware of the disease. Communication of syphilis to a person must amount to spreading infection under this section.

1 *Hau Nagji*, (1870) 7 B. H. C. (Cr. C.) 74.
2 *Thandavarayudu*, (1891) 14 Mad. 364.
3 *Sasi Kumar Bose*, (1903) 7 C. W. N. 710.
4 *Byramji Edalji*, (1887) 12 Bom. 437.
5 *Hasan Samad* (1897) Cr. R. No. 13 of 1897; Unrep. Cr. C. 903.
6 *Zakiuddin*, (1887) 10 All. 44.
7 *Rakma kom Sadhu*, (1886) 11 Bom. 59.

Small-pox.—Where a mother refused to allow her daughter suffering from small-pox to be removed to a hospital in accordance with an order made by a District Magistrate unless she accompanied her, it was held that she had committed no unlawful or negligent act within the meaning of this section[1].

Cholera.—Where K, knowing he was suffering from cholera, travelled by a train, without informing the railway officers of his condition, and M, knowing K's condition, purchased his ticket and travelled with him, it was held that K was properly convicted under this section, because he must have known that he was doing an act likely to spread infection, and that M was guilty of abetment of K's offence[2].

Plague.—The accused resided in a plague-stricken house and had been in contact with a plague patient. He was taken to the plague-shed in company with the patient, who died there. The next day the accused left the shed against orders and travelled by rail to a neighbouring town and from thence to another village. It was held that the accused was guilty of an offence under this section as he had sufficient reason to believe that his act was dangerous, and likely to spread infection of a disease dangerous to life[3].

Malignant act likely to spread infection of disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

The offence under this section is an aggravated form of the offence punishable under the preceding section.

In this section the use of the word 'malignantly' indicates that the person spreading infection should be actuated by malice. This word denotes a deliberate intention on the part of the accused.

"If any person died of the plague and his death could be traced to infection so caused maliciously, the person who caused it,...would be chargeable with homicide. It is contrary to the principle of the Code to punish acts which the doer when he committed them knew to be likely to cause certain evil results, if in fact such results were not produced, in the same manner as if such evil consequences had actually flowed from them[4]."

Disobedience to quarantine-rule.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any

1 *Cahoon* v. *Mathews*, (1887) 24 Cal. 494.
2 *Krishnappa*, (1883) 7 Mad. 276.
3 *Niadur Mal*, (1902) P. R. No. 22 of 1902.
4 2nd Rep., s. 226.

vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.

The motive for disobeying any rule is quite immaterial. The disobedience is punishable whether any injurious consequence flows from it or not

Adulteration of food or drink intended for sale.

272 Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such articles as food or drink, or knowing it to be likely that the same will be sold as food or drink shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

The mixing of noxious ingredients in food or drink, or otherwise rendering it unwholesome by adulteration, is punishable under this section Mere adulteration with harmless ingredients for the purpose of getting more profit is not punishable under it, e. g., mixing water with milk[1], or ghee with vegetable oil[2].

'Adulteration' means mixing with any other substance, whether wholly different, or of the same kind but of inferior quality

The word 'noxious' means injurious to health or unwholesome

Sale of noxious food or drink.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

1 *Chinniah*, (1897) 1 Weir 228.

2 *Cholraj Marwari*, (1908) 12 C. W. N. 608.

COMMENT.

The last section punished adulteration of food or drink, this section penalises the sale of adulterated articles, e. g., selling toddy in which germs are germinated[1]. It is not an offence to sell inferior food cheap if it is not noxious.

What is punishable under this section is the sale of noxious articles *as food* or *drink* and not the mere sale of noxious articles. Where the owner of a grain pit sold the contents of the pit before it was opened at a certain sum per maund whether the grain was good or bad, and on the pit being opened it was found that a large proportion of the grain was unfit for human consumption, it was held that the vendor could not be convicted under this section[2]. Similarly, the selling of wheat containing a large admixture of extraneous matter, such as dirt, wood, matches, charcoal, etc., was held to constitute no offence[3].

Adulteration of drug.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

To preserve the purity of drugs for medicinal purposes this section is enacted. It is sufficient if the efficacy of a drug is lessened, it need not necessarily become noxious to life.

Sale of adulterated drugs.

275. Whoever knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either

1 *Ediga Narasappa*, (1894) 1 Weir 228.

2 *Salig Ram*, (1906) 28 All. 312.

3 *Narumal Jawarmal*, (1904) 6 Bom. L. R. 520.

description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

The offence under this section consists in selling, or offering, or exposing for sale, or issuing from any dispensary, an adulterated drug as unadulterated. This section bears the same relation to s. 274 as s. 273 does to s. 272. Section 273 deals with the sale of an article of food or drink that has become noxious. This section not only prohibits sale but also its issue from any dispensary.

Sale of drug as a different drug or preparation.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

The offence constituted by this section does not involve the idea of any adulteration, or inferiority, in the substituted medicine. It is sufficient that it is not in fact what it purports to be; for instance, supplying savin instead of saffron[1].

This section is connected with s. 275 in the same way as s. 274 is connected with s. 273.

Fouling water of public spring or reservoir.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.

The water of a public spring or reservoir belongs to every member of the public in common, and if a person voluntarily fouls it he commits a public nuisance.

Ingredients.—The section requires (1) voluntary corruption or fouling of

[1] *White* v. *Bywater*, (1887) 19 Q. B. D. 582.

water; (2) the water must be of a public spring or reservoir; and (3) the water must be rendered less fit for the purpose for which it is ordinarily used.

The words 'corrupts or fouls' mean some act which physically defiles or fouls the water. Thus the act of a woman of a lower caste taking water from a public cistern does not amount to corrupting or fouling[1]. But bathing in a tank fouls the drinking water[2].

Making atmosphere noxious to health.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Rash driving or riding on a public way.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent[1] as to endanger human life[2], or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

Under this section the effect of driving or riding must be either that human life was in fact endangered or that hurt or injury was likely to be caused.

1. 'Rash or negligent.'—A rash act is primarily an over-hasty act and is thus opposed to a deliberate act, but it also includes an act which, though it may be said to be deliberate, is yet done without due deliberation and caution. The most formally scientific analysis of negligence is that of Austin. He draws a distinction between negligence, heedlessness, and rashness, which, though closely allied, are broadly distinguished by differences.

In cases of 'negligence,' the party performs not an act to which he is obliged; he breaks a positive duty.

In cases of 'heedlessness' or 'rashness' the party does an act which he is bound to forbear; he breaks a negative duty.

In cases of 'negligence' he adverts not to acts which it is his duty to do.

In cases of 'heedlessness' he adverts not to consequences of the act he does.

In cases of 'rashness,' he adverts to those consequences of the act; but by reason of some assumption which he examines insufficiently.

1 *Bhagi*, (1900) 2 Bom. L. R. 1078.

2 *Muthian*, (1897) 1 Weir 229.

'Negligence' has been defined to be the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing something which a prudent and reasonable man would not do[1].

'Negligence' is not an affirmative word; it is a negative word; it is the absence of such care, skill and diligence as it was the duty of the person to bring to the performance of the work which he is said not to have performed[2].

Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness.

Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection[3].

There are several offences in the Code in which the element of criminal rashness or negligence occurs, viz.,—ss. 279, 280, 283-289, 304-A, 336, 337, 338.

2. **'Endanger human life.'**—It is not necessary that the rash or negligent act should result in injury to life or property[4]. It is not necessary to show that a person was on the road at the time and the Court may take into consideration the probability of persons using it being placed in danger[5]. There can be no civil action for negligence if the negligent act or omission has not been attended by an injury to any person; but bare negligence involving the risk of injury is punishable criminally, though no body is actually hurt by it.

If actual hurt is caused the case would come under s. 337 or 338, and if death is caused, under s. 302 or 304-A.

Under ss. 79-280, 282, and 284-289 the offences against public safety are completed although the rash or negligent act results in no injury to life or property.

Liability of the master for the rash driving of his servant—In a case of collision or injury arising out of rash driving, the actual driver and not the owner of the carriage is liable under this section[6]; whereas, in a civil suit, the injured party has an option to sue any of them. In a criminal case every man is responsible for his own act; there must be some personal act[7].

1 *Blyth* v. *Birmingham Waterworks Co.*, (1856) 11 Ex. 781, 784.

2 *Grill* v. *General Iron Screw Collier Co.*, (1866) 35 L.J.C.P. 321, 330.

3 *Nidamarti Nagabhushanam*, (1872) 7 M. H. C. 119; *Ketabdi Mundul*, (1879) 4 Cal. 764.

4 (1871) 6 M. H. C. App. xxiii.

5 *Hormusji Nowroji Lord*, (1894) 19 Bom. 715.

6 *Larrymore* v. *Pernendoo Deo-Bai*, (1870) 14 W.R. 32.

7 *Allen*, (1835) 7 C. & P. 153.

Contributory negligence.—The doctrine of contributory negligence does not apply in criminal actions[1]. The accused will be liable even though there has been a degree of negligence on the part of the prosecutor which would incapacitate him from bringing a civil suit.

Rash navigation of vessel.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

The last section dealt with public ways on land, this section deals with water-ways. This section deals with the case of inland navigation. Rash or negligent navigation on the high seas is not punished under the Code but under certain special statutes.

Exhibition of false light, mark or buoy.

281. Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT.

Intentional exhibition of a false light, mark or buoy with a view to mislead any navigator is punishable under this section.

Conveying person by water for hire in unsafe or overloaded vessel.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

This section provides against the negligence of common carriers by water. Where a person, with the assistance of two others, plied a ferry boat, which was out of order and had a crack, and he took in one hundred

1 *Kew*, (1872) 12 Cox 355; *Blenkinsop* v. *Ogden*, [1898] 1 Q.B. 783

passengers, and as a consequence the boat was upset, and seven persons drowned, it was held that the accused had committed an offence under this section[1]. Certain persons whom the accused, a ferry-man, was rowing across a river, were drowned by the sinking of the boat which was an old one, with some holes in the bottom, over which planks had been nailed. It was held that the accused was guilty under this section[2].

There is no provision in the Code for the negligence of a common carrier by land.

Danger or obstruction in public way or line of navigation.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

COMMENT.

This section refers to parties who do acts so as to cause danger, obstruction or injury to any person in a public way or public line of navigation. The offence punishable under this section is the nuisance of causing obstruction, etc., in a public way or navigable river or canal.

It is not necessary to prove that any specific individual was actually structed. Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and foot passengers from passing without inconvenience, it was held that this offence was committed[3].

CASES.

Where a person having a house in a street, exhibited effigies at his windows, and thereby attracted a crowd to look at them, which caused the footway to be obstructed, so that the public could not pass as they ought to do, it was held that he was guilty of nuisance[4]. The prisoner in the night time altered the position of two arms of a semaphore signal on a railway station, so as to change the signal from "all clear" to "danger," and "caution" respectively, and also altered the colour of two distant signals on the line from white to red, thereby changing the signal from "clear" to "danger." The alteration caused a train, which would have passed the station without slackening speed, to slacken speed, and to come nearly to a stand. Another train going in the same direction, and on the same rails, was due at the station in half an hour. It was held that the prisoner had obstructed a train[5].

1 *Khoda Jagta*, (1864) 1 B. H. C. (Cr. C.) 137.
2 *Magenee Behara*, (1869) 11 W. R. 3.
3 *K. Venkappa*, (1913) 38 Mad. 305.
4 *Carlile*, (1834) 6 C. & P. 636.
5 *Joseph N. Hadfield*, (1870) L.R. 1 C. C. R. 253.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

Negligent conduct with respect to poisonous substance.

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

Under this section a person in possession of a poisonous substance should have negligently omitted to take such order with it as is sufficient to guard against any probable danger to human life from such substance. It is not necessary that the negligent omission should be followed by any disastrous consequences.

285. Whoever does, with fire or any combustible matter any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to fire or combustible matter.

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

COMMENT.

This section extends the provisions of the preceding section to fire or any other combustible matter.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to explosive substance.

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

The last section dealt with 'fire or combustible matter,' this deals with explosive substance;' otherwise the provisions of both the sections are alike.

The word 'knowingly' is evidently used in this section advisedly. The prisoner, having returned to his house after dawn from watching his crops at night with a loaded gun and finding his house-door locked, placed the gun, loaded, with the hammer down on the cap, on a cot outside his house, and went for a short time to a neighbouring house. In his absence the child of a neighbour came to the cot and began playing with the gun, which went off and killed the child, it was held that he could not be convicted under this section as it could not be said that the accused must have known or ought to have considered it to be probable that a child or children would be likely to be playing about in that place, and that it or they would be likely to handle or play with the gun and that the danger which actually occurred had been such a probable result as that he could be held responsible[1].

Negligent conduct with respect to machinery.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

Machinery is dangerous to human life if proper precaution is not taken in its working. This section renders any rash or negligent conduct in respect of machinery punishable. Section 284 dealt with poison; s. 285, with fire or combustible matter; s. 286, with explosive substance; and this section, with machinery.

[1] *Chenchugadu*, (1885) 8 Mad. 421.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to pulling down or repairing buildings.

COMMENT.

This section deals with negligent conduct with respect to pulling down or repairing buildings.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession[1] as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal[2], shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to animal.

COMMENT.

This section deals with improper or careless management of animals. It does not refer to savage animals alone, but to any 'animal,' wild or domestic, *e.g.*, a pony[1].

In the case of wild and savage animals, a savage or mischievous temper is presumed to be known to their owner and to all men as a usual accompaniment of such animals; and hence a positive duty is cast on the owner to protect the public against the mischief resulting from such animals being at large. Any one who keeps such a wild animal as a tiger or bear, which escapes and does damage, is liable without any proof of notice of the animal's ferocity: in such a case it may be said 'res ipsa loquitur.'

In the case of animals which are tame and wild in their general temper no mischievous disposition is presumed. It must be shewn that the defendant knew that the animal was accustomed to do mischief. Some evidence must be given of the existence of an abnormally vicious disposition. A single instance of ferocity, even a knowledge that it has evinced a savage disposition, is held to be sufficient notice[2].

[1] *Chand Manal*, (1872) 19 W.R. 1.
[2] See "The Law of Torts," 7th Edn., p. 392, by the authors of this book.

1. 'Animal in his possession.'—The accused must have the possession of the animal which he is bound to keep in control. A bull was let loose by the father of the accused some years ago; on its becoming vicious it was ordered to be shot. The accused having claimed its ownership was convicted of this offence. It was held that it would not be said that the animal was in the possession of the accused and therefore the conviction was illegal[1]. A Hindu set at large, in accordance with his religious usage, a young bull, which a considerable time afterwards became dangerous. He was prosecuted and convicted under this section. It was held that, as the bull was not then in his possession and was not dangerous when set at large, the conviction was bad[2].

2. 'Probable danger to human life, or any probable danger of grievous hurt from such animal's sufficient.—Where a pony which was tied negligently got loose, and ran through a crowded bazaar, it was held that the conviction under this section was good, because the pony on such an occasion might create danger to the lives or limbs of men, women, and children walking in the bazaar[3]. The accused, a horse-keeper, harnessed his master's horse, put him into his carriage, and then went away, leaving the horse and carriage standing in the road of the compound of his master's house without any justification; it was held that the accused had committed an offence under this section, since the horse was not the less in the actual possession of the servant, because it was for some purpose in the constructive possession of his master[4].

Punishment for public nuisance in cases not otherwise provided for.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

COMMENT.

This section provides for the punishment of a nuisance falling within the four corners of the definition given in s. 268 but **not punishable** under any other section.

Continuance of nuisance after injunction to discontinue.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

1 *Fatta*, (1889) P. R. No. 32 of 1889.
Shambu Dial, (1904) P. R. No. 5 of 1904.
3 *Chand Manal*, (1872) 19 W.R. 1.
4 *Natha Reva*, (1881) Cr. R. April 1881, Unrep. Cr. C. 163.

COMMENT.

This section punishes a person continuing nuisance after he is enjoined by a public servant not to repeat or continue it. Sections 142 and 143 of the Code of Criminal Procedure empower a Magistrate to forbid an act causing public nuisance.

Sale, etc., of obscene books, etc.

292. Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation or figure, or attempts, or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any representation sculptured, engraved, painted or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

COMMENT.

This section is intended to prevent the sale, distribution, or exhibition of obscene books, prints, etc. Mere possession of obscene prints does not amount to an offence under this section.

The test of obscenity is this, whether the tendency of the matter charged as obscene is to deprive and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall[1]. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depriving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication which it is the intention of the law to suppress[2]. A passage may not be obscene in its place in a religious book but may become so by being published in a journal sold to the general public[3].

Under this exception religious sculptures, paintings, and engravings are only excepted. But works of art are never considered obscene.

Having in possession obscene book, etc., for sale or exhibition.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

1 Per Cockburn, C.J., in *Hicklin*, (1868) L. R. 3 Q. B. 360, 371.

2 *Hari Singh*, (1905) 28 All. 100.

3 *Ghulam Hussain*, (1916) P.R. No. 5 of 1916.

COMMENT.

This section is a necessary corollary to s. 292. It punishes a preparation for the offence under s. 292. The possession of a book or a thing must be for sale, distribution, or public exhibition. Mere possession will not render a person liable under this section.

Obscene acts and songs.

294. Whoever, to the annoyance of others,

(*a*) does any obscene act in any public place, or

(*b*) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

COMMENT.

The obscene act or song must cause *annoyance*. As to the meaning of 'public place,' see s. 159.

Keeping lottery-office.

294-A. Whoever keeps any office or place for the purpose of drawing any lottery[1] not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes[2] any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

COMMENT.

Lottery stands on the same footing as gambling because both of them are games of chance. The section does not touch authorised lotteries, but intends to save people from the effects of those not authorised by prohibiting (1) the keeping of offices or places for drawing them, and ( ) the publication of any advertisement relating to them.

1. 'Lottery.'—A lottery is a game of chance in which the event of either gain or loss of the absolute right to a prize or prizes by a person concerned is made wholly dependent upon the drawing or casting of lot[1]. A lottery is a distribution of prizes by lot or chance[2].

[1] *Kamakshi Achari* v. *Appavu Pillai*, (1863) 1 M. H. C. 448.

[2] *Taylor* v. *Smetten*, (1883) 11 Q. B.D. 207.

2. '**Publishes.**'—This word includes both the person who sends a proposal as well as the proprietor of a newspaper who prints the proposal as an advertisement[1]. The proprietor of a Bombay newspaper who published an advertisement in his paper relating to a Melbourne lottery was held to be guilty under this section[2]. The intention of the legislature appears to have been, not only that chances, etc., in the lottery should not be sold, but also that the public should not be informed where such chances, etc., could be purchased. And they enacted that no person should publish these proposals to the world, that the poor and ignorant sort of people might not know where these transactions were going on[3].

CASES.

Agreement for contributions to be paid by lot is not a lottery.—An agreement whereby a number of persons subscribe, each a certain sum, by periodical instalment, with the object that each in his turn (to be decided by lot), shall take the whole subscription for each instalment, all such persons being returned the amount of their contributions, the common fund being lent to each subscriber in turn, was held to be not illegal[4].

Transactions in which prizes are decided by chance amount to a lottery.—The appellant erected a tent, in which he sold packets, each containing a pound of tea, at 2*s.* 6*d.* a packet. In each packet was a coupon entitling the purchaser to a prize, and this was publicly stated by the appellant before the sale, but the purchasers did not know, until after the sale, what prizes they were entitled to and the prizes varied in character and value. The tea was good and worth the money paid for it. It was held that the act of the appellant did constitute a lottery[5]. The proprietor of a paper conducted competitions in the following manner. A sentence was inserted in the paper with one word missing; intending competitors were required to cut out a coupon attached to the paper, to write the missing word on the coupon and send it, together with a fee of 1*s.* for each coupon, to the proprietor. The missing word was decided upon before the commencement of the competition. The entrance fees were divided among the successful competitors. It was held that the competitions constituted a lottery[6].

Transaction requiring skill for winning prizes is not a lottery.—The accused published a newspaper containing an advertisement of a "coupon competition," which was to be carried out by means of coupons, to be filled up by the purchasers of the paper with the name of the horses selected by the purchasers as likely to come in first, second, third, and fourth in a race. For every coupon filled up after the first the purchaser paid a penny, and the accused promised a prize of £100 for naming the first four horses correctly. It was held that the transaction did not amount to a lottery, because

[1] *Mancherji Kavasji*, (1885) 10 Bom. 97.
[2] *Ibid*
[3] Per Grose, J., in *Smith*, (1791) 4 T.R. 414, 419.
[4] *Vasudevan Nambudri* v. *Mammod*, (1898) 22 Mad. 212.
[5] *Taylor* v. *Smetten*, (1883) 11 Q. B. D. 207.
[6] *Barclay* v. *Pearson*, [1893] 2 Ch. 154.

the filling up of the names of horses required skill and certain amount of special knowledge[1]. The accused published a newspaper containing an offer of a money prize for a correct prediction of the number of births and deaths in London during a named week. Competitors, who were not limited to one prediction, were to fill in the predicted numbers on coupons which were published in the issue of the paper which contained the offer. It was held that the competition not being one, the result of which depended entirely on chance, was not a lottery[2].

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

The principle on which this Chapter has been framed is a principle on which it would be disirable that all Governments should act, but from which the British Government in India cannot depart without risking the dissolution of society: it is this, that every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another[3].

Injuring or defiling place of worship, with intent to insult the religion of any class.

295. Whoever destroys, damages or defiles[1] any place of worship, or any object[2] held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

The object of this section is to punish those persons who intentionally wound the religious feelings of others by injuring or defiling a place of worship.

1. 'Defiles.'—This word is not to be restricted in meaning to acts that would make an object of worship unclean as a material object, but extends to acts done in relation to the object of worship which would render such object ritually impure[4]. It is not confined to the idea of 'making dirty', but extends to ceremonial pollution. The presence of a Shudra in such portions of a Hindu temple as are open to non-Brahmans is not a 'defilement' within the meaning of this section[5].

1 *Stoddart* v. *Sagar*, [1895] 2 Q. B. 474.
2 *Hall* v. *Cox*, [1899] 1 Q. B. 198.
3 Note J.
4 *Sivakoti Swami*, (1885) 1 Weir 253.
5 *Kuttichami Moothan* v. *Rama Pattar*, (1918) 41 Mad. 980.

2. **'Object.'**—"There is a distinction, not arbitrary, between object which are objects of respect and even veneration and objects which are held sacred; as an example of the former, I may refer to a place of sepulture (not actually consecrated, as in the case of ground specially consecrated for that purpose according to the rites of Christian Churches), as distinguished from a place for worship to the deity or where an idol or altar is kept; and such distinction appears to have been kept in view by the Legislature, for while s. 295 deals with the latter class of objects and places, s. 297 deals more especially with trespasses on places of sepulchre and places set apart for the performance of funeral rites and as depositories for the remains of the dead[1]."

This word does not include animate objects according to the High Courts of Allahabad and Calcutta and the Chief Court of the Punjab. It refers only to inanimate objects such as churches, mosques, temples, and marble or stone figures representing Gods[2]. Killing of a cow by a Mussalman, within the sight of a public road frequented by Hindus, is therefore held to be not punishable under this section[3]. Similarly, where a bull dedicated and set at large on a ceremonial occasion of a Hindu in accordance with religious usage was killed by certain Mahomedans secretly and at night in the presence of none but Muhomedans, it was hed that no offence had been committed[4].

Disturbing religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

Assemblies held for religious worship, or for the performances of religious ceremonies are hereby protected from intentional disturbance.

The object of this section is to secure freedom from molestation when people meet for the performance of acts in a quiet spot vested for the time in the assembly exclusively; and not when they engage in worship in an unquiet place, open to all the public as a thoroughfare[5].

Ingredients. –To constitute an offence under this section-

(1) There must be a voluntary disturbance caused.

(2) The disturbance must be caused to an assembly engaged in religious worship or religious ceremonies.

1 Per Brandt, J., in *Ratna Mudali*, (1886) 10 Mad. 126, 127, 128.

2 *Imam Ali*, (1887) 10 All. 150, F.B.; *Romesh Chunder Sannyal* v. *Hiru Mondal*, (1890) 17 Cal. 852.

3 *Imam Ali*, sup; *Ali Muhammad*, (1917) P. R. No. 10 of 1918.

4 *Romesh* v. *Hiru*, sup.

5 *Vijiaraghava Chariar*, (1903) 26 Mad. 554, 574.

(3) The assembly must be lawfully engaged in such worship or ceremonies, *i. e.*, they must be doing what they have a right to do.

CASES.

Disturbance caused by saying 'amin.'—A mosque is a place where all sects of Mahomedans are entitled to go and perform their devotions as of right, according to their conscience; and a Mahomedan of one sect pronouncing the word "*amin*" loudly, in the honest exercise of conscience, commits no offence or civil wrong[1], though he may by such conduct cause annoyance in the mosque to other worshippers of another sect who do not pronounce that word loudly[2]. But any person, Mahomedan or not, who goes into a mosque not *bona fide* for religious purpose, but *mala fide*, for the purpose of disturbing others engaged in their devotions, will render himself criminally liable[3].

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

Trespassing on burial places, &c.

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

This section deals more especially with trespasses on places of sepulture and places set apart for the performance of funeral rites and as depositories for the remains of the dead. It extends the principle laid down in s. 295 to places which are treated as sacred. The essence of the section is an intention, or knowledge or likelihood, to wound feelings or insult religion and when with that intention or knowledge trespass on a place of supulchre, indignity to a corpse, or disturbance to persons assembled for funeral ceremonies, is committed, the offence is complete.

1 *Ata-ullah* v. *Azim-ullah*, (1889) 12 All. 494, F. B.

2 *Jangu* v. *Ahmad-ullah*, (1889) 13 All. 419, F. B.

3 *Ibid.*

'Trespass in any place of worship.'—The trespass must be in a place of worship with the knowledge that the feelings of persons would be wounded thereby. Where a low caste man entered into a temple, an offence under this section was held to have been committed.[1]

'Funeral rites.'—The section contemplates disturbance of persons engaged in performing funeral ceremonies. But a *Moharram* procession is not a funeral ceremony within the meaning of this section[2]. Obstruction to the performance of obsequies comes under this section[3].

Uttering words, etc., with deliberate intent to wound religious feelings.

298. Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

The Authors of Code in their Note observe: "In framing this clause, we had two objects in view: we wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbours by words, gestures, or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause[4]."

CASES.

Interpolation of a forbidden chant.—Interpolation of a forbidden chant in an authorized ritual is held to be an offence under this section[5].

Exhibiting cow's flesh.—Exhibiting cow's flesh by carrying it in an uncovered state round a village with a deliberate intention of wounding the religious feelings of the Hindus is hold to be an offence under this section[6].

Wilful pollution of food served at a caste dinner.— Where certain Hindus present at a caste dinner had sat down to partake of the food which had been served to them, when certain other members of the caste came, and

1 *Bhagya*, (1880) Unrep. Cr. C. 148.
2 *Ghosita* v. *Kalka*, (1885) 5 A.W.N. 49.
3 *Subramania Ayyan* v. *Venkata Rayar*, (1883) 6 Mad. 254, 257.
4 Note J.
5 *Narasimha* v. *Shree Krishna*, (1892) 2 M. L. J. R. 236.
6 *Rahman*,(1893) 13 A.W.N. 144.

after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated, and who, in consequence, left the food untouched, it was held that the persons who threw the shoe could not be convicted under this section[1]. This decision does not lay down sound law. The framers of the draft Code were of opinion that the rendering the food of a Hindu useless to him by causing it to be in what he considered as a polluted state was an injury necessitating punishment[2].

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY.

1. Unlawful homicide.
   - (a) Culpable homicide
   - (b) Murder.
   - (c) Homicide by rash or negligent act
   - (d) Suicide.
   - (e) Being a Thug
2. Causing miscarriage.
3. Exposure of infants and concealment of births of children
4. Hurt.
   - (i) Simple, (ii) Grievous.
5. Wrongful restraint and wrongful confinement.
6. Criminal force.
7. Assault.
8. Kidnapping.
9. Abduction.
10. Slavery and forced labour.
11. Rape.
12. Unnatural offence.

Of Offences affecting Life.

Culpable homicide.

299. Whoever causes death[1] by doing an act with the intention of causing death[2], or with the intention of causing such bodily injury as is likely to cause death[3], or with the knowledge that he is likely by such act to cause death[4], commits the offence of culpable homicide.

ILLUSTRATIONS.

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did

1 *Moti Lal*, (1901) 24 All. 155. 2 Note J.

not intend to kill B, or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

COMMENT.

Homicide is the killing of a human being by a human being. It is either (A) lawful or (B) unlawful.

(A) Lawful homicide, or simple homicide, includes several cases falling under the General Exceptions (Ch. IV).

(B) Unlawful homicide includes—

(1) Culpable homicide not amounting to murder (s. 299).

(2) Murder (s. 300).

(3) Rash or negligent homicide (s. 304-A).

(4) Suicide (ss. 305, 306).

(A) **Lawful or simple homicide.**—This is committed where the death is caused in one of the following ways:—

1. Where the death is caused by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means, and with proper care and caution (s. 80).

2. Where the death is caused justifiably, that is to say,

(i) By a person, who is bound, or by mistake of fact in good faith believes himself bound, by law (s. 76).

(ii) By a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (s. 77).

(iii) By a person acting in pursuance of the judgment or order of a Court of Justice (s. 78).

(iv) By a person who is justified or who by reason of a mistake of fact in good faith, believes himself to be justified by law (s. 79).

(v) By a person acting without any criminal intention to cause harm,

and in good faith, for the purpose of preventing or avoiding other harm to person or property (s. 81).

(vi) Where death is caused in exercising the right of private defence of person or property (ss. 100, 103).

3. Where death is caused by a child, or a person of unsound mind, or an intoxicated person as will come under ss. 82, 83, 84 and 85.

4. Where death is caused unintentionally by an act done in good, faith for the benefit of the person killed, when

(i) he or, if a minor or lunatic, his guardian has expressly or impliedly consented to such an act (ss. 87, 88); or

(ii) where it is impossible for the person killed to signify his consent or where he is incapable of giving consent, and has no guardian from whom it is possible to obtain consent, in time for the thing to be done with benefit (s. 92).

(B) Unlawful homicide.—Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing

(i) an act with the intention of causing death ;

(ii) an act with the intention of causing such bodily injury as is likely to cause death ; or

(iii) an act with the knowledge that it was likely to cause death.

Without one or other of these elements an act, though it may be in its nature criminal and may occasion death, will not amount to the offence of culpable homicide[1].

English law.—Manslaughter is the unlawful killing of another without malice aforethought, express or implied. It is of two kinds : (1) Voluntary, and (2) Involuntary.

(1) Voluntary manslaughter : where a man greatly provokes another, and the other kills him ; or where upon a sudden quarrel, two persons fight, and one of them kills the other.

These two cases are met with exceptions (1) and (4) to s. 300.

(2) Involuntary manslaughter ; where death is caused by accident in doing an unlawful act not amounting to felony ; or where death is caused by culpable neglect, i. e., while doing a lawful act in an unlawful manner.

The first case will not be culpable homicide under the Code as will appear from ill. (c) to this section ; and the second case is separately provided for by s. 304-A.

Under the English law, it is neither murder nor manslaughter unless the death takes place within a year and a day from the blow or other cause. If the deceased died after that time, the law would presume that his death had proceeded from some other cause[2]. This rule is not adopted in the Code.

Ingredients.—The section has the following essentials :—

1. Causing of the death of a human being.
2. Such death must have been caused by doing an act
   (i) with the intention of causing death, or
   (ii) with the intention of causing such bodily injury as is likely to cause death ; or

[1] *Rahee*, (1866) Unrep. Cr. C. 6.   [2] Hawk. P. C. 31, s. 9; 1 East 344.

(iii) with the knowledge that the doer is likely by such act to cause death.

1. '**Causes death.**'—Death means the death of a human being (s. 46). But this word does not include the death of an unborn child, *vide* expln. (3). It is immaterial if the person whose death has been caused is not the very person whom the accused intended to kill: see ill. (*a*) and s. 301. The offence is complete as soon as any person is killed.

2. '**By doing an act with the intention of causing death.**'—None of the endless variety of modes by which human life may be cut short before it becomes in the course of nature extinct, is excluded. Death may be caused by poisoning, starving, striking, drowning, and by a hundred different ways.

By section 32 words which refer to acts done extend also to illegal omissions and the word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action (s. 43). Therefore death caused by illegal omission will amount to culpable homicide.

See cases under s. 300 relating to neglect to supply medical aid or food.

Death caused by the effect of words on the imagination or the passions.—The Authors of the Code observe: "The reasonable course, in our opinion, is to consider speaking as an act, and to treat A as guilty of voluntary culpable homicide, if by speaking he has voluntarily caused Z's death, whether his words operate circuitously by inducing Z to swallow poison or directly by throwing Z into convulsions.[1]"

English law.—The English law takes no cognizance of homicide unless death results from bodily injury, caused by some act or omission, as distinguished from death occasioned by an influence on the mind, or by any disorder or disease arising from such influence.

Death caused without intention whilst doing an unlawful act.— If death is caused under circumstances specified in s. 80, the person causing the death will be exonerated under that section. But if it is caused in doing an unlawful act, the question arises whether he should be punished for causing it. The Code says that when a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment of his offence, without any addition on account of such accidental death. See ill. (*c*) to this section.

3. **With the intention of causing bodily injury as is likely to cause death.**—The connection between the 'act' and the death caused thereby must be direct and distinct; and though not immediate it must not be too remote. If the nature of the connection between the act and the death is in itself obscure, or if it is obscured by the action of concurrent causes, or if the connection is broken by the intervention of the subsequent causes, or if the interval of time between the death and the act is too long, the above condition is not fulfilled.

When *dhatura* was administered by a woman to her husband to save her from the quarrelsome tongue of her husband who became ill but did not die

[1] Note M.

and she did not know what it was but it was supplied to her by her lover it was held that she was guilty under s 337 as she administred without care an unknown powder but the lover was guilty under ss. 307 and 109[1].

4. 'With knowledge that he is likely by such act to cause death.'—'Knowledge' is a strong word and imports a certainty and not merely a probability

Cases. Knowledge of probable consequence of act. -Beating.- Where a person struck at with a heavy stick and killed a man being at the time under the *bona fide* belief that the object at which he struck was not a human being but something supernatural, but through terror having taken no steps to satisfy himself that it was not a human being he was held to have committed culpable homicide.

Poisoning. Where a woman of twenty years of age was found to have administered *dhatura* (poisonous herb) to three members of her family it was held that she must be presumed to have known that the administration of *dhatura* was likely to cause death although she might not have administered it with that intention But in a later case where *dhatura* was administered for the purpose of committing robbery and one victim died and the other suffered seriously it was held that in respect of the person who died the offence committed was that of grievous hurt (s 23[illegible]) and in respect of the other the offence came under s. 328 (hurt by poison)[1]

But a person who administered a well known poisonous substance to another must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and if death ensue he is guilty of murder notwithstanding that his intention may not have been to cause death

Beating for exercising evil spirit Where the accused, in exorcising the spirit of a girl whom they believed to be possessed subjected her to a beating which resulted in her death it was held that they were guilty of culpable homicide

Clauses 1 and 2. Intention of causing such bodily injury as is likely to cause death.' 'Knowledge that he is likely by such act to cause death.'—The practical difference between these two phrases is expressed in the punishment provided in 304 But the phrase 'with the knowledge that he is likely by such act to cause death' includes all cases of rash acts by which death is caused for rashness imports a knowledge of the likely result of an act which the actor does in spite of the risk

Death caused without the 'requisite intention or 'knowledge' is not culpable homicide The offence of culpable homicide supposes an intention, or knowledge of likelihood of causing death In the absence of such intention or knowledge, the offence committed may be the offence causing grie

1 *Gauri Shankar*, (1918) 40 All 360.
2 *Kangla*, (1898) 18 A W N. 163.
3 *Tulsha*, (1897) 20 All. 143.
4 *Bhagwan Din*, (1908) 30 All. 568.
5 *Bhagava Guiyappa*, (1916) 19 Bom. L. R. 54.
6 *Jamaludin*, (1892) Unrep Cr. C. 603.

vous hurt[1], or simple hurt[2]. It is only where death is attributed to an injury which the offender did not know would endanger life or would be likely to cause death and which in normal conditions would not do so notwithstanding death being caused the offence will not be culpable homicide but grievous or simple hurt. Every such case depends upon the existence of abnormal conditions unknown to the person who inflicts the injury[3]

Cases.—In the course of a trivial dispute the accused gave the deceased a severe push on the back which caused him to fall on the road below, a distance of two and a half cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. It was held that this was simply a case of using criminal force[4]. According to the English law this would have been treated as manslaughter.

The accused, while engaged in a verbal wrangle with his wife, struck her a blow on the left side with great force, the effect of which was that she vomitted and bled from the nose, and within little more than an hour died. The death was caused by the rupture of the spleen. It was held that he was guilty of grievous hurt only.[5] Three persons attacked a fourth with lathis and death ensued through a fracture of the skull of the person so attacked. There was, however, no evidence to show that the common intention of the assailants was to cause death or which of them actually struck the blow which fractured the skull of the deceased. It was held that the offence of which the assailants were guilty was that of causing grievous hurt and not that of culpable homicide not amounting to murder[6]. But in another case the facts of which were similar the same High Court held that the act of the accused amounted to culpable homicide not amounting to murder under s. 300, excep. 4[7]. In a sudden quarrel with the deceased, the accused seized him by the testicles and squeezed them with considerable force and for a considerable time. Owing to his unsound bodily condition the deceased never recovered from the shock of the pain and died soon after. The medical evidence showed that the injury inflicted would not in normal conditions have endangered his life. It was held that the accused was guilty of hurt[8].

Death due to diseased spleen.—(1) **Grievous hurt.** Where the prisoner gave a blow with a light bamboo stick, not more than an inch in diameter, to the deceased who was suffering from diseased spleen on the region of that organ, he was held to be guilty of causing grievous hurt[9]. The accused went to a place where a fly was standing, and presuming that it belonged to a man who was sleeping on a cot close by roused him and told him to let him have the fly. The man explained that the fly did not belong to him and remarked at the same time that he was ill. The accused, thereupon,

1 *O'Brien*, (1880) 2 All. 766; *Idu Beg*, (1881) 3 All. 776.
2 *Safatulla*, (1879) 4 Cal. 815; *Fox*, (1879) 2 All. 522; *Randhir Singh*, (1881) 3 All. 597.
3 *Bai Jiba*, (1917) 19 Bom. L. R. 823.
4 *Acharjya*, (1877) 1 Mad. 224.
5 *Idu Beg*, (1881) 3 All. 776.
6 *Chandan Singh*, (1917) 40 All. 103.
7 *Gulab*, (1918) 40 All. 686, *Chandan Singh*, sup., dissented from.
8 *Bai Jiba*, (1917) 19 Bom. L. R. 823.
9 *Megha Meeah*, (1865) 2 W.R. 39.

got irritated and pulled the cot about, causing the man to fall out of it, kicked him and struck him on the side or on the ribs with a stick. Owing to the injuries the man died very soon after. It was held that as the deceased was suffering from spleen disease the accused was guilty of causing grievous hurt[1].

(2). **Hurt.**—The prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and, after she was down, slapped her with his open hand. The woman died on account of the rupture of her spleen which was diseased. It was held that the prisoner was guilty of causing hurt[2]. The prisoner, dissatisfied and irritated by the lazy and insufficient manner in which a punkha cooly was managing a punkha, went up to him and struck him one or more blows. The cooly was suffering from a diseased spleen and died from the injuries he had received. It was held that the prisoner was guilty of causing hurt[3].

Explanation 1.—A person causing bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerating the death of that other, is deemed to have 'caused his death.' But one of the elements of the offence of culpable homicide must be present[4].

Explanation 2.—'By resorting to proper remedies death might have been prevented.'—The Authors of the Code observe: We see no reason for excepting cases of persons who die of slight wound, which, from neglect or from the application of improper remedies, have proved mortal "from the simple general rule which we propose"[5].

"Although proof be given that the wound or other bodily injury if skilfully treated might not have resulted in death, yet if in fact death is the result, the wound 'causes' death. And it does not avail the offender to prove that the first cause might have been removed or rendered inoperative by the application of proper remedies and that death might thus have been prevented. 'Proper remedies and skilful treatment may not be within the reach of the wounded man; or, if they are at hand, he may be unable or unwilling to resort to them. But this is immaterial so far as relates to the due interpretation of the words 'cause of death'. The primary cause which sets in motion some other cause,—as the severe wound which induces gangrene or fever,—and the ultimate effect, death, are sufficiently connected as cause and effect, notwithstanding that the supervening sickness or disease might have been cured by medical skill. All that it is essential to establish is, that the death has been caused by the bodily injury, and, if there be any intervening cause, that it is connected with a sufficient degree of probability with the primary one.

"Cases not reached by either of the above Explanations may occur, in which there will be some perplexity in determining the *cause of death*. Suppose a person who has received some slight wound or hurt resorts not to

1 *O' Brien*, (1880) 2 All. 766.
2 *Punchanun Tantee*, (1866) 5 W. R. 97.
3 *Fox*, (1879) 2 All. 522; *Randhir Singh*, (1881) 3 All. 597.
4 *Fox*, *supra*.
5 Note M.

' proper remedies and skilful treatment, ' but to some ignorant and unskilled adviser; and that, in consequence, the bodily injurily is aggravated by the application of unwholesome salves and death ensues—or suppose he drinks spirit immoderately in a hot climate or suppose he is carried to a hospital where erpeipelas happens at the time to be prevalent, and catches the disorder and dies of it—or again suppose the bodily injury renders the amputatiou of a limb necessary, and that the patient is soon afterwards attacked by some complaint innocouss to a person in sound health, but which proves fatal to him in his weakly condition. In all these cases, if no bodily injury had been received, the man would not have died; and it may therefore be said that the injury is in some sense the cause of death. But it seems indispensable that the death should be connected with the act of violence or other primary cause, not merely by a chain of causes and effects, but bo such direct inflnence as is calculate to produce the effect without the intervention of any conciderable change of circumstances ".[1]

Cases.—Where the accused was indicted for the murder of his wife by kicking her, and a surgeon administered brandy to her as a restorative, some of which went the wrong way, and entered her lungs, and might have caused death, it was held that he was guilty of manslaughser[2]. Similarly, where an injury was infiicted on a person by a blow which in the judgment of competent medical men rendered an operation advisable, and, as a preliminary to the operation, chloroform was administered to the patient, who died during its administration, and it was agreed that the patient would not have died but for its administration, it was held that the person causing the injury was liable to be indicted for manslaughter[3]. But, when a wound, not in itself mortal, for want of proper applications, or from neglect, turns to a gangrene or a fever, and that gangreno or fever is the immediate cause of the death of the party wounded, the party by whom the wound is caused is guilty of murder or manslaughter according to circumstances. For though the fever or gangrene, and not the wound, be the immodiate cause of the death, yet the wound being the cause of gangrene or fever is the immediate cause of the death, *causa causati.* Thus it was resolved, that if one gives wounds to another, who neglects the cure of them, or is disorderly, and doth not keep that rule which a person wounded should do, yet if he die it is murder or manslaughter according to the circumstances; because if the wounds had not been, the man had not died; and, therefore, neglect or disorder in the person who received the wounds shall not excuse the person whogave them[4].

Explanation 3.—The causing of death of a child in the mother's womb is not homicide, such an offence is punishable under s. 315. But it is homicide to cause the death of a living child; if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Under the English law it is necessary that the child should have completely emerged.

1 M. & M. 228.
2 *McIntyre*, (1847) 2 Cox 379.
3 *Davis*, (1883) 15 Cox 174.
4 Russell, 6th Edn., Vol. III, p.35; 1 Hale 428; *Flynn*, (1868) 16 W. R. 319.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Murder.

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

ILLUSTRATIONS.

(*a*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(*c*) A intentionally gives Z a sword-cut or club-wound sufficient to caues the death of a man in the ordinary course of nature. Z dies in consequencee Here A is guilty of murder, although he may not have intended to caus. Z's death.

(*d*) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person

When culpable homicide is not murder.

who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

ILLUSTRATIONS.

(*a*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

ILLUSTRATION.

Z attempts to horsewhip A not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

ILLUSTRATION.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death ; A has therefore abetted murder.

COMMENT.

In this section the definition of culpable homicide appears in an expanded form. Each of the four clauses requires that the act which causes death

should be done intentionally, or with the knowledge or means of knowing that death is a natural consequence of the act.

Scope.—An offence cannot amount to murder unless it falls within the definition of culpable homicide; for this section merely points out the cases in which culpable homicide is murder. But an offence may amount to culpable homicide without amounting to murder.

It does not follow that a case of culpable homicide is murder, because it does not fall within any of the exceptions to s. 300. To render culpable homicide murder, the case must come within the provisions of clauses 1, 2, 3, or 4 of s. 300.

Culpable homicide and murder distinguished.—The distinction between these two offences is very ably set forth by Melvill, J., in *Govinda's case*[1].

"For convenience of comparison, the provisions of ss. 299 and 300 may be stated thus:—

SECTION 299	SECTION 300.
A person commits culpable homicide, if the act by which the death is caused is done	Subject to certain exceptions, culpable homicide is murder if the act by which the death is caused is done
(*a*) with the intention of causing death;	(1) with the intention of causing death;
	(2) with the intention of causing such bodily injury as the offender *knows to be likely* to cause the death of *the person to whom the harm is caused*
(*b*) with the intention of causing such bodily injury as is *likely* to cause death;	(3) with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is *sufficient in the ordinary course of nature* to cause death;
(*c*) with the knowledge that the act is *likely* to cause death	(4) with the knowledge that the act is *so imminently dangerous that it must in all probability cause death* or such bodily injury as is likely to cause death.

"I have underlined the words which appear to me to mark the difference between the two offences.

"(*a*) and (1) show that where there is an intention to kill, the offence is always murder.

"(*c*) and (4) appear to me intended to apply (I do not say that they are necessarily limited) to cases in which there is no intention to cause death or bodily injury. Furious driving, firing at a mark near a public road, would be cases of this description. Whether the offence is culpable homicide or

[1] (1876) 1 Bom. 342-46.

murder, depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder.

"The essence of (2) appears to me to be found in the words which I have underlined. The offence is murder, if the offender *knows* that the *particular person injured* is likely, either from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. The illustration given in the section is the following:—

'A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health.'

"There remain to be considered (*b*) and (3), —and it is on a comparison of these two clauses that the decision of doubtful cases...must generally depend. The offence is culpable homicide, if the bodily injury intended to be inflicted is *likely* to cause death; it is murder, if such injury is *sufficient in the ordinary course of nature* to cause death. The distinction is fine, but appreciable. It is much the same distinction as that between (*c*) and (4), already noticed. It is a question of degree of probability. Practically, I think, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part may be likely to cause death; a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death."

As regards (*c*) Peacock, C. J., observes in *Gora Chand Gopee's case*[1]: "There are many cases falling within the words of s. 299 'or with the knowledge that he is likely by such act to cause death' that do not fall within the 2nd, 3rd, or 4th clauses of s. 300, such for instance as the offences described in ss. 279, 280, 281, 282, 284. 285, 286; 287, 288, and 289, if the offender knows that his act or illegal omission is likely to cause death, and if in fact it does cause death. But although he may know that the act or illegal omission is so dangerout that it is likely to cause death, it is not murder, even if death is caused thereby, unless the offender knows that it must in all probability cause death, or such bodily injury as is likely to cause death, or unless he intends thereby to cause death or such bodily injury as is described in cl. 2 or 3 of s. 300.

"As an illustration, suppose a gentleman should drive a buggy in a rash and negligent manner, or furiously along a narrow crowded street. He might know that he was likely to kill some person, but he might not intend to kill any one. In such a case, if he should cause death, I apprehend he would be guilty of culpable homicide not amounting to murder, unless it should be found as a fact that he knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury, etc., as to bring the case within the 4th clause of s. 300. In an ordinary case of furious driving, the facts would scarcely warrant such a finding...If a man should drive a buggy furiously, not merely along a crowded street, but

1. (1866) 5 W. R. 45, F. B.

intentionally into the midst of a crowd of persons, it would probably be found as a fact that he knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury, etc, as in cl 4 s. 300

"From the fact of a man's doing an act with the knowledge that he is likely to cause death, it may be presumed that he did it with the intention of causing death, if all the circumstances of the case justify such a presumption but I should never presume an intention to cause death merely from the fact of furious driving in a crowded street in which the driver might know that his act would be likely to cause death Presumption of intention must depend upon the facts of each particular case

"Suppose a gentleman should cause death by furiously driving up to a railway station Suppose it should be proved that he had business in a distant part of the country say at the opposite terminus that he was intending to by a particular train and that he could not arrive at his destination in time for his business by any other train that at the time of the furious driving it wanted only two minutes to the time of the train's starting that the road was so crowded that he must have known that he was likely to run over some one and cause death Would any one under the circumstances presume that his intention was to cause death Would it not be more reasonable to presume that his intention was to save the train If the judge or jury should find that his intention was to save the train but that he must have known that he was likely to cause death he would be guilty of culpable homicide not amounting to murder unless they should also find that the risk of causing of death was such that he must have known and did know that his act must in all probability cause death etc within the meaning of clause 4, s 300

"If they should go further and infer from the knowledge that he was likely to cause death that he intended to cause death, he would be guilty of murder and liable to capital punishment

"Putting it shortly all acts of killing done

(1) with the intention to kill or

(2) to inflict bodily injury likely to cause death, or

(3) with the knowledge that death must be the most probable result, are *prima facie* murder, while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder [1]

Where, therefore, the act of the accused does not fall within the first clause of s 300, that is, where the act was done not *with the intention of causing death*, the difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. It is culpable homicide where death must have been known to be *a probable* result It is murder, where it must have been known to be *the most probable* result

[1] Per Straight, J, in *Idu Beg*, *Singh*, (1873) 6 N W P 26 1881) 3 All. 776, 778, *Girdharee*

English law.—Murder is unlawfully causing the death of another with malice aforethought, express or implied. Malice aforethought in murder practically means—

(1) An intent to kill or do grievous bodily harm to the person who is killed.

2. An intent to kill or do grievous bodily harm to any one else.

(3) An intent to do any criminal act which will probably cause death or grievous bodily harm to some one.

(4) An intent to oppose by force any officer of justice who is lawfully arresting or keeping in custody some one whom he is entitled to arrest or keep in custody, provided the prisoner knows that he is such officer of justice.

Clause 1.—**'Act by which the death is caused is done with intention.'**—The word 'act' includes omissions as well (s. 33). Any omission by which death is caused will be punishable as if the death is caused directly by an act. Thus, where a person neglected to provide his child with proper sustenance although repeatedly warned of the consequences and the child died, it was held to be murder[1]. Where a mistress omitted to supply her servant with proper food and lodging and so caused her death, the Court remarked: "The law clearly is that, if a person has the custody and charge of another and neglects to supply proper food and lodging, such person is responsible if from such neglect death results to the person in custody: but it is also equally clear that, when a person, having the free control of her actions and able to take care of herself, remains in a service where she is starved and badly lodged, the mistress is not criminally responsible for any consequences that may ensue"[2].

Where a father sacrificed his son because wealth had not accompanied his birth, and afterwards partially cut his own throat as a protest against his deity's injustice he was held guilty of murder[3].

Clause 2.—This clause applies where the act by which death is caused is done with the intention of causing such bodily injury as the offender *knows to be likely to cause the death of the person* to whom the harm is caused. It applies in special cases where the person injured is in such a condition or state of health that his or her death would be likely to be caused by an injury which would not ordinarily cause the death of a person in sound health, and where the person inflicting the injury knows that owing to such condition or state of health it is likely to cause the death of the person injured.

Clause 3.—The distinction between this clause and cl. 2 depends upon the degree of probability of death from the act committed. If from the intentional act of injury committed the probability of death resulting is high, the finding will be that the accused intended to cause death, or injury *sufficient* in the ordinary course of nature to cause death; if there was proba-

[1] *Gunga Singh*, (1873) 5 N. W. P. 44.

[2] *Smith* (1865) L. & C. 607, 624.

[3] *Bishendharee Kahar*, (1867) 7 W. R. 100.

bility in a less degree of death ensuing from the act committed, the finding will be that the accused intended to cause injury, *likely* to cause death.

Cases.—Two men met each other in a drunken state and commenced a quarrel during which they abused each other. This lasted for about half an hour, when one of them ran to his own house and came back with a heavy pestle with which he struck the other a violent blow on the left temple causing instant death. It was held that the offence fell within clauses 2 and 3[1]. Where the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, it was held that the offence committed was that of culpable homicide not amounting to murder[2].

Clause 4.—This clause provides for that class of cases where the acts resulting in death are calculated to put the lives of many persons in jeopardy without being aimed at any one in particular, and are perpetrated with a full consciousness, of the probable consequences, *e. g.*, where death is caused by firing a loaded gun into a crowd (*vide* ill.(*d*)), or by poisoning a well from which people are accustomed to draw water.

Where it is clear that the act by which the death is caused is so imminently dangerous that the accused must be presumed to have known that it would, in all probability, cause death or such bodily injury as is likely to cause death then unless he can meet this presumption his offence will be culpable homicide, and it would be murder unless he can bring it under one of the exceptions[3].

Where a snake-charmer, to show his own skill, placed a venomous snake, whose fangs had not been extracted, on the head of a spectator, without the intention to cause harm, and the spectator in trying to push off the snake was bitten and died in consequence, it was held that he was guilty under cl. 3 of s. 299[4].

Exception 1.—Provocation.—Anger is a passion to which good and bad men are both subject, and mere human frailty and infirmity is not punished equally with ferocity or other evil feelings.

The act must be done *whilst the person doing it is deprived of self-control* by grave and sudden provocation. That is, it must be done under the immediate impulse of provocation[5]. If it appear that the party, before any provocation given, intended to use a deadly weapon towards any one who might assault him, this would show that a fatal blow given afterwards was not to be attributed to the provocation, and the crime would therefore be murder[6]. If the act was done after the first excitement had passed away, and there was time to cool, it is murder[7].

1 *Dasser Bhooyan*, (1867) 8 W. R. 71.
2 *Govind*, (1876) 1 Bom. 342.
3 *Lakshman*, (1888) Unrep. Cr. C. 411.
4 *Gonesh Dooley*, (1879) 5 Cal. 351.
5 *Nokul Nushyo*, (1867) 7 W. R. 27.
6 *John Thomas*, (1837) 7 C. & P. 817
7 *Lochan*, (1886) 8 All. 635.

The provocation must be *grave and sudden* and of such a nature as to deprive the accused of the power of self control It is not a necessary consequence of anger, or other emotion, that the power of self control should be lost[1] It must be shown distinctly not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions but that that feeling had an adequate cause

Confession by a woman of immorality —Although a confession of adultery by a wife to her husband who in consequence kills her is such provocation as will entitle the jury in their discretion to find a verdict of manslaughter instead of murder a similar confession of illicit intercourse by a woman who was not the prisoner's wife but only engaged to be married to him can not if he kills her in consequence justify such a verdict

Cases Adulterous intercourse is held, in various cases to give grave and sudden provocation But if death of the adulterer is caused not in a fit of passion but with subsequent deliberation this section will not apply

Where the accused finding a man intriguing with his wife beat him and after taking him to the bank of a river cut off his head[4] where the accused's concubine refused to abandon another connection and the accused, after remonstrating with the woman and leaving her followed and killed her with a dagger which he had purchased with the intention of killing her, where the accused suspecting infidelity in his wife followed her with a hatchet on one night when she stealthily left his house and finding her talking with her paramour there and then killed her and[7] where the accused, suspecting the widow of his cousin followed her one night with a sword in hand to a considerable distance and finding her actually having connection with her lover killed her there and then it was held in all these cases that the offence of murder was committed No doubt in all these cases there was provocation but the acts were not committed while the accused were deprived of the power of self control, they were not the offsprings of the moment but were the result of cool and mature consideration after the first excitement had passed away

Exception 2.— Exceeding the right of private defence. —This exception provides for the case of a person who exceeds the right of private defence If the excess is intentional the offence is murder, if unintentional, culpable homicide The Authors of the Code observe "Wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder and voluntary culpable homicide in defence

"The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as voluntary culpable homicide in defence. It prohibits such homicide indeed; but it

1 *Devji Govindji*, (1895) 20 Bom 215.
2 *Hari Giree*, (1868) 10 W R. 26.
3 *Palmer*, [1913] 2 K. B. 29
4 *Yasin Shaikh*, (1869) 12 W. R. 68.
5 *Ghuntappa*, (1882) 1 Weir 306.
6 *Mohan* (1886) 8 All. 622.
7 *Lochan*, (1886) 8 All. 635.

authorizes acts which lie very near to such homicide, and this circumstance, we think, greatly mitigates the guilt of such homicide

"That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous The law punishes and ought to punish such killing, but we cannot think that the law ought to punish such killing as murder for the law itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage to give the assailant a cut with a knife across the fingers which may render his right hand useless to him for life or to hurl him down stairs with such force as to break his leg and it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the same assailant that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death it ought hardly we think, to visit him with the highest punishment if he inflicts death[1]

Cases No right of private defence. Where a person wilfully killed another whilst endeavouring to escape after having been detected in the act of house breaking by night for the purpose of theft and where the accused pursued a thief and killed him after a house trespass had ceased it was held that the accused had committed murder and they did not come under the exception A Head Constable in order to extort money from certain gipsies unlawfully ordered one of them to be bound and taken away There was a great disturbance caused thereby and the gipsies advanced in a threatening manner towards the Constable, upon which he fired with a gun at the crowd and killed one of them Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested and withdrawn himself, or had he effected his escape It was held that the Head Constable had no right of private defence against the acts of the gipsies and that he was guilty of murder[4]

Threats of incantations give no right of defence. The accused and the deceased met one day in a liquor shop, and there drank together. They afterwards walked in company and on their way an altercation took place in respect of the deceased having caused the death of the accused's four children by incantations. The deceased admitted that he had so caused their death, and added that he would also bring about the death of the accused by causing the accused to be taken by a tiger. The accused, thereupon, killed the deceased with several blows of a heavy stick. It was held

1 Note M.
2 *Durwan Geer*, (1866) 5 W.R. 73.
3 *Balakee Jolahed*, (1868) 10 W. R. 9.
4 *Abdul Hakim*, (1880) 3 All. 253.

that the accused had no reasonable apprehension of danger to himself from the threats of the deceased and that his case was not taken out of the category of murder by reason of the second exception[1]. Similarly, threat of witchcraft does not justify the causing of death[2].

Exception 3.—Public servant exceeding his powers.—This exception protects a public servant, or a person aiding a public servant acting for the advancement of public justice, if either of them exceed the powers given to them by law, and cause death. It gives protection so long as the public servant acts in good faith, but if his act is illegal and unauthorised by law, or if he glaringly exceed the powers entrusted to him by law, this exception will not protect him. Where death was caused by a constable under orders of a superior it being found that neither he nor his superior believed that it was necessary for the public security to disperse certain reapers by firing on them, it was held that he was guilty of murder, since he was "not protected in that he obeyed the orders of his superior officer"[3].

Exception 4.—Death caused in a sudden fight.—The fight should not have been pre-arranged. A fight is not *per se* a palliating circumstance, only an unpremeditated fight can be such[4]. The lapse of time between the quarrel and the fight is therefore a very important consideration. If there intervened a sufficient time for passion to subside and for reason to interpose, the killing would be murder[5]. This exception was held not to apply to a case where two bodies of men, for the most part armed with deadly weapons, deliberately entered into an unlawful fight, each being prepared to cause the death of the other, and aware that his own might follow, but determined to do his best in self-defence, and in the course of the struggle death ensued[6].

Duelling.—Duelling does not come within this exception. It is not protected at all. Where two persons deliberately agree to fight, and meet for that purpose, and one is killed; the other cannot help himself by alleging that he was first struck by the deceased, or that he had often declined to meet him and was urged by importunity, or that he meant not to kill, but only to disarm his adversary: for since he deliberately engaged in an act highly culpable in defiance of the laws, he must at his peril abide the consequence[7]. All persons who are present, encouraging and promoting a duel that results in death, will be guilty of murder[8].

Exception 5.—Death caused of the person consenting to it.—The following reasons are given for not punishing homicide by consent so severely as murder: "In the first place, the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honour, not unfrequ-

1 *Gobadur Bhooyan*, (1870) 13 W. R. 55.
2 *Ganduva Nayako*, (1881) 1 Weir 305.
3 *Subba Naik*, (1898) 21 Mad. 249.
4 *Rohimuddin*, (1879) 5 Cal. 31.
5 Foster, 296.
6 *Nayamuddin*, (1891) 18 Cal. 484, F. B.
7 1 East P. C. 242.
8 *Cuddy*, (1843) 1 C. & K. 210.

ently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freed man who in ancient times held out the sword that his master might fall on it, the highborn native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian societies would not be regarded by the public, and ought to be treated by law, as assassins "[1].

The case supposed in the illustration to exception 5 is one of the offences expressly made punishable by s. 305.

Cases. -Where the accused caused a pile to be lighted, and persuaded a *suttee* to re-ascend it, after she had once left it, and she was burnt[2]; where the accused acting upon the express desire of an adult emasculated him and death ensued owing to the rough manner of the operation[3]; where the accused repeatedly requested by his wife, who was overwhelmed with grief at the death of her child, to kill her, did kill her one night while she was asleep[4]; and where certain snake-charmers, by professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake, and from the effect of the bite three of such persons died[5] it was held in all these cases that the accused were protected by this exception, because in all of them the element of consent had entered in a greater or less degree.

Death caused by the voluntary act of the deceased resulting from fear of violence.—If a man creates in another man's mind an immediate sense of danger which causes such person to try to escape, and in so doing he injures himself, the person who creates such a state of mind is responsible for the injuries which result[6]. If, for instance, four or five persons were to stand round a man, and so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, murder would be committed[7].

Discovery of the body of the person murdered not absolutely necessary.—The mere fact that the body of a murdered person has not been found is not a ground for refusing to convict the accused of murder. But when the body is not forthcoming, the strongest possible evidence as to the fact of the murder should be insisted on before conviction[8].

301. If a person by doing anything which he intends or knows to be likely to cause death, commits culpable

1 Note M.

2 *Sahebloll Reetloll*, (1863) 1 R. J. P. J. 174.

3 *Baboolun Hijrah*, (1866) 5 W. R. 7.

4 *Anunto Kurnagat*, (1866) 6 W. R. 57.

5 *Poonai Fattemah*, (1869) 12 W. R. 7.

6 *Halliday*, (1889) 61 L. T. 701, 702.

7 *Towers*, (1874) 12 Cox 530, 533.

8 *Adu Shikdar*, (1885) 11 Cal. 635.

Culpable homicide by causing death of person other than person whose death was intended

homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause

COMMENT

If the killing take place in the course of doing an act which a person intends or knows to be likely to cause death it ought to be treated as if the real intention of the killer had been actually carried out

Where a mistake is made in respect of the person as where the offender shoots at A supposing that he is shooting at B it is clear that the difference of person can make none in the offence or its consequences, the crime consists in the wilful doing of a prohibited act the act of shooting at A was wilful although the offender mistook him for another

Similarly, there will be no difference where the injury intended for one falls on another by accident If A makes a thrust at B, meaning to kill and C throwing himself between receive the thrust and die A will answer for it as if his mortal purpose had taken place on B

The same principle is applicable where through accident or the mistake of a party not privy to the criminal design the mischief falls either on a person not intended or on the party intended but in a different manner from that intended A designing to poison her own child who lived in the house of B, delivered to B a bottle of poison, with directions to administer a portion of it to the child B not knowing that the bottle contained poison left it on the mantel piece in her house having forgotten to administer any portion of it to the child during her absence C the son of B (a child of five years old) finding the bottle on the mantel piece, administered a portion to the child of A, and the child died of the poison it was justly held that A was guilty of murder[1].

If A counsel B to poison his wife, B accordingly obtains poison from A and gives it his wife in a roasted apple, the wife gives it to a child of B not knowing it was poison who eats it and dies, this is murder in B though he intended nothing to the child

302 Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder.

COMMENT.

This section provides punishment for murder, s. 304, for culpable homicide not amounting to murder

[1] 7th Parl. Rep. 26, *Jeoh*, (1916) 39 All 161.

[2] 1 Hale P C. 436

Punishment for murder by life-convict.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

COMMENT.

This section makes capital sentence compulsory in the case of a convict who commits murder while undergoing a sentence of transportation.

Punishment for culpable homicide not amounting to murder.

304. Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

COMMENT.

This section provides punishment for culpable homicide not amounting to murder. Under it there are two kinds of punishment applying to two different circumstances:

(1) If the act by which the death is caused is done with the *intention* of causing death or such bodily injury as is likely to cause death, the punishment is transportation for life, or imprisonment of either description for a term which may extend to ten years and fine.

(2) If the act is done with the *knowledge* that it is likely to cause death but *without any intention* to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

CASE.

The accused killed his stepfather, who was an infirm old man and an invalid, with the latter's consent, his motive being to get three innocent men (his enemies) hanged. It was held that the offence was covered by the fifth exception to s. 300 and was punishable under Part 1 of s. 304[1].

[1] *Ujagar Singh*, (1917) P.R. No. 45 of 1917.

Causing death by negligence.

304-A. Whoever causes the death of any person by doing any rash or negligent act[1] not amounting to culpable homicide[2] shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

The provisions of this section apply to cases where there is no intention to cause death, and no knowledge that the act done in all probability would cause death[1]. The section deals with homicide by negligence.

Section 304-A does not apply to a case in which there has been the voluntary commission of an offence against the person. Acts, probably or possibly involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338, or 304-A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge of the offender, and placed in their appropriate place in the class of offences of the same character[2]. Where the act is in its nature criminal, this section has no application[3]. The section does not apply to cases where the death has arisen, not from the negligent or rash mode of doing the act, but from some result supervening upon the act which could not have been anticipated[4].

1. 'Rash or negligent act.'--*Criminal rashness* is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. *Criminal negligence* is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted[5].

"Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and

1 *Sukaroo Kobiraj*, (1887) 14 Cal. 566, 569.

2 *Ketabdi Mundul*, (1879) 4 Cal. 764 766.

3 *Damodaran*, (1888) 12 Mad. 56.

4 *Heera Joeeta*, (1901) 3 Bom. L. R. 394,

5 Per Straight, J., in *Idu Beg*, (1881) 3 All. 776, 780.

that, if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts, themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness because he has carried the experiment too far, results from an obvious and dangerous misconception...It is clear, however, that if the words 'not amounting to culpable homicide' are a part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death"[1].

Death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*, it is not enough that it may have been the *causa sine qua non*[2]. Thus, where a person using a road was accidentally killed in consequence of its being out of repair through neglect of trustees, appointed for the purpose of repairing the roads, to contract for repairing it, it was held that they were not chargeable with manslaughter[3].

To render a person liable for neglect of duty there must be such a degree of culpability as to amount to *gross* negligence on his part. It is not every little trip or mistake that will make a man so liable[4].

2 **'Not amounting to culpable homicide.'** "Section 304-A is directed at offences outside the range of ss. 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge . enters. For the rash or negligent act which is declared to be a crime is one 'not amounting to culpable homicide,' and it must therefore be taken that intentionally or knowingly inflicted violence, directly and wilfully caused, is excluded. Section 304-A does not say every unjustifiable or inexcusable act of killing not hereinbefore mentioned shall be punishable under the provisions of this section, but it specifically and in terms limits itself to those rash or negligent acts which cause death but fall short of culpable homicide of either description"[5].

Contributory negligence. The doctrine of contributory negligence does not apply to criminal liability, where the death of a person is caused partly by the negligence of the accused and partly by his own negligence.

If the accused is charged with contributing to the death of the deceased by his negligence, it matters not whether he was deaf, or drunk, or negligent or in part contributed to his own death[6].

1 *Nidamarti Nagabhushanam*, (1872) 7 M.H. C. 119, 1 0.
2 *Omkar Rampratap*, (1902) 4 Bom. L. R. 679.
3 *Pocock*, (1851) 17 Q. B. 34.
4 *Finney*, (1874) 12 Cox 625.
5 *Idu Beg*, (1881) 3 All. 776, 778, 779.
6 *Swindall*, (1846) 2 C. & K. 230.

CASES.

Rash or negligent act.—Where a railway official, after being instructed to move some trucks down an incline uncoupled and singly, disobeyed the instruction and lost control over them and a cooly in trying to stop the trucks fell under the wheels and was killed[1]; where an engine-driver failed to sound his whistle before starting the engine, and the engine having been put in motion caused a boy, who was painting a waggon on the line, injury, which resulted in his death[2]; where the accused cut out the piles of a person with an ordinary knife and from the profuse bleeding the person died[3]; where the prisoner struck at a man carrying a child and the blow fell on the child and killed it[4]; where the prisoner received poison from her paramour to administer to her husband as a charm and administered it with the result that death ensued, but she did not know that the substance given to her was noxious until she saw its effects[5]; where the lessee of a ferry allowed an unsound boat to be used, and, in consequence of its unsoundness, the boat sank while crossing the river and some of the persons in it were drowned[6]; where the accused sent two boxes for carriage upon a railway containing fireworks falsely declaring them to contain iron locks, with the result that in loading one of the boxes exploded killing one coolie and injuring another and damaging the railway waggon in which it was being placed[7]; where the accused receiving a powder from an enemy of her relative took no precaution to ascertain whether it was noxious and mixed it with food believing that by so doing she would become rich but four of the persons who ate the food died[8]; and where the accused administered to her husband a deadly poison arsenous oxide) believing it to be a love potion in order to stimulate his affection for her and the husband died[9], it was held in all these cases that the acts of the accused were either rash or negligent.

Act, not rash or negligent.—Where the accused threw his stick at the deceased with such force that it hit the deceased on the head with the point, and made a punctured wound which caused the death of the deceased, it was held that he had not committed an offence under this section because injury was intentionally caused to the deceased. He was, therefore, held guilty of causing hurt[10].

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person

[1] *Nand Kishore*, (1884) 6 All. 248.

[2] *Thomson*, (1894) Cr. R. No. 47 of 1895, Unrep. Cr. C. 721.

[3] *Sukaroo Kobiraj*, (188) 14 Cal. 566.

[4] *Budhya*, (1888) Unrep. Cr. C. 398; but in *Sahae Rae*, (1878) 3 Cal. 6 3, such act was held to be grievous hurt.

[5] *Mussammat Bakhan*, (1887) P. R. No. 60 of 1887. In a somewhat similar case the Bombay High Court acquitted the accused of the offence of murder. *Nagava Bhimappa*, (1902) 4 Bom. L. R. 425.

[6] *Bhutan*, (1894) 6 All. 472.

[7] *Kamr-ud-din*, (1905) P. R. No. 22 of 19 5.

[8] *Jamna*, (1909) 31 All. 290.

[9] *Ramava Channappa*, (1915) 17 Bom. L. R. 17.

[10] *William Keegan*, (1893) Cr. R. No. 38 of 1893, Unrep. Cr. C. 673.

Abetment of suicide of child or insane person.

in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

COMMENT.

This and the following section have been inserted because the ordinary law of abetment is inapplicable. They apply when suicide is in fact committed.

Abetment of suicide.

306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

Abetment of suicide is punishable under this section and attempt to commit suicide, under s. 309.

Abetment of suicide is confined to the case of persons who aid and abet the commission of suicide by the hand of the person himself who commits the suicide; when another person, at the request of or with the consent of the suicider, has killed that person, he is guilty of homicide by consent, which is one of the forms of culpable homicide. Persons actually assisting a Hindu widow in becoming *sati* (self-immolation in the same pyre with the dead body of her husband) are guilty of suicide or abetment thereof[1].

Attempt to murder.

307. Whoever does any act with such intention or knowledge and under such circumstances, that if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.

[1] *Ram Dayal*, (1913) 36 All. 26.

ILLUSTRATIONS.

(*a*) A shoots at Z with intention to kill him, under such circumstances that, if death is ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b*) A with the intention of causing the death of a child of tender years exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c*) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(*d*) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

COMMENT.

This and the following section seem to apply to attempts to murder, in which there has been not merely a commencement of an execution of the purpose, but something little short of a complete execution, the consummation being hindered by circumstances independent of the will of the author. The act or omission, although it does not cause death, is carried to such a length as, at the time of carrying it to that length, the offender considers sufficient to cause death[1].

Attempt.— Attempt is an intentional preparatory action which fails in object —which so fails through circumstances independent of the person who seeks its accomplishment[2].

Act committed must be capable of causing death.—The act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of things; and if the act complained of is not of that description, a prisoner cannot be convicted under this section[3].

Where, therefore, the prisoner presented an uncapped gun at his superior officer (believing the gun to be capped) with the intention of murdering him, but his rifle was pushed up, and he was prevented from pulling the trigger, it was held that he was guilty not under this section but under s. 511[4]. In this case Westropp, J., said: "That may be an attempt under s. 511 which does not come within s. 307;" and "s. 307 was not intended to exhaust all attempts to commit murder which should be punished under the Code." But the Allahabad High Court has laid down that s. 511 does not apply to attempts to commit murder which are fully and exclusively provided for by s. 307[5]. In the Allahabad case the accused pointed a loaded pistol at a person to shoot him and pulled the trigger. The cap exploded but the charge

[1] M. & M. 274; *Rawal Arab*, (1898) Unrep. Cr. C. 964.

[2] *Luxman Narayan Joshi*, (1899) 2 Bom. L. R. 286.

[3] Per Couch, C. J., in *Francis Cassidy*, (1867) 4 B. H. C. (Cr. C.) 17, 21.

[4] *Ibid*, pp. 24, 25.

[5] *Niddha*, (1891) 14 All. 38.

did not go off. He was convicted under this section. It was held that a person was criminally responsible for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he had done the last proximate act necessary to constitute the completed offence, and when the completion of the offence was only prevented by some cause independent of his volition.

CASES.

Death resulting not from the act of the accused but through other causes. – Where a child wrapped up in a quilt was abandoned in a thicket close to a house and footpath, and was found very shortly after its exposure, the child having died not from exposure but from the ignorance of the person who found it and who gave it no food[1]; and where a man struck another on the head with a stick, and believing him to be dead set fire to the hut with a view to remove all evidence of the crime, and the Civil Surgeon deposed that the blow only stunned the deceased, and the death was really caused by the injuries from the burning when the accused set fire to the hut[2], it was held that the offence of attempt to murder had been committed.

Poison. Where the accused intentionally put arsenic into her husband's food in order to kill him and the husband died sometime afterwards from inflammation of the brain, and there was no evidence that the poison was even a secondary cause of the deceased's death[3]; and where the accused asked a doctor to supply her with medicine for the purpose of poisoning her son-in-law[4], it was held that no attempt to murder had been committed. But where a woman administered *dhatura* to three members of her family who did not die, it was held that this offence had been committed as she must be presumed to have been known that the administration of *dhatura* was likely to cause death, although she might not have administered it with that intention[5]. But in a recent case, where the object of administering *dhatura* was to commit robbery and one of the persons to whom it was administered died and another taken seriously ill, it was held that in respect of the former the offence committed was that of grievous hurt and in respect of the latter it was one under s. 328[6].

Attempt to discharge loaded fire arm.—Where a man accustomed to shooting fired at a person at a distance of six paces, it was held that he must have known that his act was likely to cause death. The fact that the back of the chair on which the victim was seated intercepted a number of bullets, and thus avoided a fatal result, was held not to reduce the offence from one under s. 307 to one under s. 324. For if the person shot at had died, the accused would have been guilty of murder[7].

1 *Khodabux Fakeer*, (1868) 10 W. R. 52.
2 *Khandu Bhavani*, (1890) 15 Bom. 194.
3 *Venkatasami*, (1882) Weir, 3rd Edn., 187.
4 *Musst. Bakhtawar*, (1882) P. R No. 24 of 1882.
5 *Tulsha*, (1897) 20 All. 143.
6 *Bhagwan Din*, (1908) 30 All. 568.
7 *Abdul Rahaman*, (1908) 9 C. L. J. 432.

308. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Attempt to commit culpable homicide.

ILLUSTRATION.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

COMMENT.

The wording of this section is the same as the preceding one except that it deals with an attempt to commit culpable homicide. The punishment provided is therefore not so severe.

309. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

Attempt to commit suicide.

COMMENT.

The act done must be in the course of the attempt, otherwise no offence is committed. Where a woman with the intention of committing suicide by throwing herself in a well, actually ran towards it, where she was seized by a person, it was held that she might have changed her mind, and she was caught before she did anything which might have been regarded as the commencement of the offence[1]. Her act simply amounted to *preparation.* The pounding of oleander roots with an intention to poison one's self with the same was held not to constitute this offence[2]. Where the accused jumped into a well to avoid escape from Police ; and when rescued he came out of the well of his own accord, it was held that, in the absence of evidence that he jumped into the well to commit suicide, he could not be convicted of an offence under this section[3].

1 *Ramakka*, (1884) 8 Mad. 5.
2 *Tayee*, (1883) Unrep. Cr. C. 188.
3 *Dwarka Poonja*, (191) 14 Bom. L. R. 146, 1 Bom. Cr. C. 87.

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

Thug.

COMMENT.

This and the following section incorporate the provisions of the Thugee Act of 1836.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

Punishment.

COMMENT.

Gangs of persons habitually associated for the purpose of inveigling and murdering travellers or others in order to take their property, etc., are called Thugs. Thugs are robbers and dacoits, but robbers and dacoits are not Thugs. Thugs committed robbery or dacoity or kidnapping always accompanied with murder. Killing of the victim was the essential thing. Thugs have disappeared from the country altogether.

Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

312. Whoever voluntarily causes a woman with child[1] to miscarry shall, if such miscarriage[2] be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child[3], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Causing miscarriage.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

COMMENT.

This section deals with the causing of miscarriage with the consent of the woman, while the next deals with the causing of miscarriage without the consent.

1. 'With child' means pregnant, and it is not necessary to show that 'quickening,' that is, perception by the mother of the movements of the

fœtus has taken place or that the embryo has assumed a fœtal form, the stage to which pregnancy has advanced and the form which the ovum or embryo may have assumed are immaterial. Where a woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month and that there was nothing which could be called fœtus or child, it was held that the acquittal was bad in law[1].

2. **'Miscarriage'** is the premature expulsion of the child or fœtus from the mother's womb at any period of pregnancy, before the term of gestation is completed.

3. **'Quick with child.'**—Quickening is the name applied to peculiar sensation experienced by a woman about the fourth or fifth month of pregnancy.

Causing miscarriage without woman's consent.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

Under this section the act should have been done without the consent of the woman. Under this section the person procuring the abortion is alone punished: under s. 312 such person as well as the woman who causes herself to miscarry are both punished.

Death caused by act done with intent to cause miscarriage.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

If act done without woman's consent.

and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

COMMENT.

This section provides for the case when death has occurred in causing miscarriage. Under it, it is immaterial whether the woman was pregnant

[1] *Ademma*, (1886) 9 Mad. 369.

or not and whether the act done was or was not intended or known to cause her death.

Act done with intent to prevent child being born alive or to cause it to die after birth.

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother. be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

COMMENT.

Any act done with the intention here mentioned which results in the destruction of the child's life, whether before or after its birth, is made punishable.

Causing death of quick unborn child by act amounting to culpable homicide.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATION.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

COMMENT.

This section punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening and where the death is caused after the quickening and before the birth of the child. Any act or omission of such a nature and done under such circumstances as would amount to the offence of culpable homicide, if the sufferer were a living person, will, if done to a quick unborn child whose death is caused by it, constitute the offence here punished.

The principle laid down in s. 301 is again applied here.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care

Exposure and abandonment of child under twelve years, by parent or person having care of it.

of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

COMMENT.

This section is intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured. It does not apply when children are left under the care of others[1]. It applies where a child is exposed and no death supervenes; if, however, death follows, the conviction must be under s. 304[2]. The offence is complete notwithstanding that no actual danger or risk of danger arises to the child's life.

'**Expose**' means to physically put outside, so that such putting outside involves some physical risk to the person put out. Having reference to a child, it would mean putting it somewhere where it could not receive the protection necessary for its tender age; as, for instance, putting it outside the house, whereby it would be exposed to the risk of climate, wild beasts and the like. The exposure contemplated by the Code was one by which danger to life might immediately ensue. A woman, mother of an illegitimate child, six months old, left it in charge of a blind woman saying she would soon return. She went away to another village and did not return; and apparently she never intended to return. It was held she could not be convicted under this section[3].

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Concealment of birth by secret disposal of dead body.

[1] *Felani Hariani*, (1871) 16 W. R. 12.

[2] *Banni*, (1879) 2 All. 349.

[3] *Mirchia*, (1896) 18 All. 364.

COMMENT.

This section is intended to prevent infanticide. It is directed against concealment of birth of a child by secretly disposing of its body.

Ingredients.—The section requires—

1. Secret burying or otherwise disposing of the dead body of a child.
2. It is immaterial whether such child die before or after its birth.
3. Intention to conceal the birth of such child by such secret burying or disposal.

This section deals with the secret burial of a child. It is sufficient to show that a 'child' was born and that it was sufficiently developed to have lived if born alive[1]. If it is a *fœtus* only then ss. 312 and 511 of the Code will apply.

The offence becomes complete when the birth, *i. e.*, the delivery of a child, dead, or living, is concealed by any means[2].

Where the accused gave her new-born illegitimate dead child to a woman with instructions to dispose of it secretly, and the latter carried out the instructions by throwing it into a river, it was held that the accused was not guilty of substantive offence under this section, though the facts more appropriately came under the definition of abetment[3].

Of Hurt.

Hurt — Simple..... / Grievous... — Aggravated forms:

1. By dangerous weapons.
2. To extort property or to constrain to illegal act.
3. By means of poison to commit offence.
4. To extort confession, or to compel restoration of property.
5. To deter public servant from his duty.

Hurt.

319. Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

COMMENT.

The Authors of the Code in their Note say: "Many of the offences which fall under the head of hurt will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion, and places it on the table of another; a person who conceals a scythe in the grass on which another is in the habit of walking; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt; but they cannot, without extreme violence to langu-

1 *Radha Rangu*, (1899) 1 Bom. L. R. 155.

2 *Lalbu*, (1898) Cr. R. No. 15 of 1898, Unrep. Cr. C. 961.

3 *Baji*, (1895) Cr. R. No. 40 of 1895, Unrep. Cr. C. 775.

age, be said to have committed assaults. We purpose to designate all pain, disease and infirmity by the name of hurt[1]".

The definition of hurt appears to contemplate the causing of pain, etc., by one person to another. Acts neither intended nor likely to cause death are hurt or grievous hurt even though death results therefrom, *e. g.*, rupture of spleen cases.

CASES.

Act neither intended nor likely to cause death is hurt even though death is caused.—Where the accused with a view to chastising her daughter, eight or ten years old, for impertinence, gave her a kick on the back and two slaps on the face, the result of which was death[2]; and where the accused, taking offence at an insult offered him by his companion in a drunken brawl, threw him down upon the ground, and stamped his feet upon him, which caused his death within twenty days[3], it was held that the offence of voluntarily causing hurt had been committed.

Spleen cases.—Where death ensued in consequence of a rupture of a diseased speen, s. 321 was held to apply[4]. Where a wife died from a chance kick in the spleen, not known to be diseased, inflicted by her husband on provocation, and the husband had no intention or knowledge that the act was likely to cause hurt endangering human life, it was held that he was guilty of hurt only[5]. Where the accused kicked a punkha-puller who had an enlarged spleen which was not known to the accused, and death ensued, it was held that he was guilty of causing hurt[6]. Where the accused caused the death of another person by throwing a piece of brick at him which struck him in the region of the spleen and ruptured it, the spleen being diseased, it was held that as the prisoner had not the intention to cause death or to cause such bodily injury as was likely to cause death, he had committed the offence of voluntarily causing hurt[7].

Hair pulling.—Pulling a woman by the hair was held to be this offence[8].

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous":—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

[1] Note M.
[2] *Beshor Bewa*, (1872) 18 W. R. 29.
[3] *Radkia Badru*, (1872) Cr. R. Oct. 1871, Unrep. Cr. C. 67.
[4] *Bawaji*, (1872) Unrep. Cr. C. 63.
[5] *Bysagoo Noshyo*, (1867) 8 W. R. 29.
[6] *Fox*, (1879) 2 All. 522.
[7] *Randhir Singh*, (1881) 3 All. 597.
[8] (1883) Weir, 3rd Edn., 196.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be," during the space of twenty days," in severe bodily pain, or unable to follow his ordinary pursuits.

COMMENT.

Grievous hurt is hurt of a more serious kind. This section merely gives description of grievous hurt.

The Authors of the Code in their Note observe: "We have found it very difficult to draw a line between those bodily hurts which are serious and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible; but it is far better that such a line should be drawn, though rudely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, should be classed together[1]".

To make out the offence of voluntarily causing grievous hurt, there must be some specific hurt, voluntarily inflicted, and coming within any of the eight kinds enumerated in s. 320.

Clause 1.—'Emasculation' means depriving a person of masculine vigour.

Clause 6.—'Disfiguration' means doing a man some external injury which detracts from his personal appearance but does not weaken him, as the cutting of a man's nose or ears. Where a girl's cheeks were branded with a red-hot iron, which left scars of a permanent character, it was held that the disfigurement contemplated by this section was caused[2].

Clause 7.—Fracture or dislocation of a bone or tooth causes great pain and suffering to the injured person and hence it is considered grievous hurt. Where the accused threw his wife from a window about six feet high, but the fall was broken by a weather board fixed just below it and resulted in the fracture of knee-pan and in several small wounds, it was held that the offence of grievous hurt had been committed[3].

Clause 8.—The mere fact that a man has been in hospital for twenty days is not sufficient, it must be proved that during the time he was unable to follow his ordinary pursuits[4]. Where a man was so much injured that he had to go to hospital, but left it perfectly cured on the twentieth day, it was held that that day would count as one of the twenty days during which he was unable to follow his ordinary pursuits[5]; where the accused caused

1 Note M.

2 *Anta Dadoba*, (1863) 1 B. H. C. 101.

3 *Jiva*, (1891) Unrep. Cr. C. 558.

4 *Vasta Chela*, (1894) 19 Bom. 247.

5 *Sheikh Bahadur*, (1862) 2nd Mad. Ses.

hurt to a woman who remained in a hospital only for seventeen days, out of which she was in danger for three days, it was held that he had caused grievous hurt[1]. A disability for twenty days constitutes grievous hurt: if it continues for a smaller period, then the offence is hurt[2].

CASES.

Diseased spleen.—Where the accused, pulling the deceased out of a cot kicked him, and struck him on the side or on the ribs with a stick, whereby the deceased, whose spleen was diseased, died, it was held that he had committed the offence of voluntarily causing grievous hurt[3].

Blow aimed at one person falling upon another.—The accused struck a woman, carrying an infant in her arms, violently over head and shoulders. One of the blows fell on the child's head, causing death. It was held that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt[4]. In the course of an altercation between the accused and the complainant on a dark night the former aimed a blow with his stick at the head of the latter. To ward off the blow, the complainant's wife, who had a child on her arm, intervened between them. The blow missed its aim, but fell on the head of the child, causing severe injuries, from the effects of which it died. It was held that the accused was guilty of simple hurt only[5]. The accused had the intention of causing hurt to a person but not grievous hurt and the nature of the blow taken with reference to the person against whom it was aimed cannot be taken to indicate the necessary intention or knowledge as to causing grievous hurt.

Voluntarily causing hurt.

321. Whoever does any act with intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing grievous hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said, "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if,

1 *Bassoo Rannah*, (1865) 2 W. R. 29.
2 *Bishnooram Surma*, (1864) 1 W. R. 9.
3 *O'Brien*, (1880) 2 All. 766; *Idu Beg*, (1881) 3 All. 776.
4 *Sahae Rae*, (1878) 3 Cal. 623.
5 *Chatur Natha*, (1919) 21 Bom. L. R. 1089.

intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

ILLUSTRATION.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which cause Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Punishment for voluntarily causing hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

This is a general section for the punishment of voluntarily causing hurt. Sections 324, 327, 328, 329 and 330 deal with the same offence done under certain aggravated circumstances: and ss. 334, 336 and 337 provide for punishment when there are certain mitigating circumstances.

Voluntarily causing hurt by dangerous weapons or means.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument, which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

This section makes simple hurt more grave, and liable to more severe punishment where it has the differentia of one of the modes of infliction described in the section.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished

Punishment for voluntarily causing grievous hurt.

with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The relationship between this section and the preceding one is the same as that between s. 324 and s. 323.

Where several accused struck the deceased blows, one of which only was fatal, and it was not found who struck the fatal blow, it was held that, in the circumstances, it would not be said that those who did not strike the fatal blow contemplated the likelihood of such a blow being struck by the others in prosecution of the common object, and that they were all guilty under this section and not under s. 302[1].

Voluntarily causing hurt to extort property, or to constrain to an illegal act.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

[1] *Gouridas Namasudra*, (1908) 36 Cal. 659.

COMMENT.

This is an aggravated form of the offence of hurt and is severely punishable because the object of causing it is to extort property from the sufferer.

Causing hurt by means of poison, &c., with intent to commit an offence.

328. Whoever administers to or causes to be taken by any person any poison or any stupifying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The offence under this section is complete even if no hurt is caused to the person to whom the poison or any other stupifying, intoxicating, or unwholesome drug is administered. This section is merely an extension of the provisions of s. 324. Under s 324 actual causing of hurt is essential; under this section mere administration of poison is sufficient to bring the offender to justice.

Mere procuring or supplying a poisonous drug at the instigation of a person who wishes to take it is not administering it.

CASES.

Administering an unwholesome drug.—Where a man administered the juice of some leaves to some villagers by way of ordeal and some of them showed symptoms of poison[1], and where the prisoners administered powder of *dhatura* to a woman and robbed her of her jewellery while she was senseless, an offence under this section was held to have been committed[2]. Where for the purpose of facilitating robbery, *dhatura* was administered by two persons to certain travellers, in consequence of which one of the travellers died and others were made seriously ill, it was held that in respect of the traveller who died the offence committed was that punishable under s. 325; and in respect of the travellers who did not die the offence committed was that under s. 328[3]. But in a subsequent case the same Court, where *dhatura* was administered, with the object of facilitating robbery, in such quantity that the person to whom it was given died in the course of a few hours, convicted the accused of murder under s. 302[4].

Causing to be taken an unwholesome thing.—Where the accused mixed milk-bush juice in his toddy pots, knowing that if drunk by a person it would cause injury, with the intention of detecting an unknown thief who was always in the habit of stealing his toddy, and the toddy was drunk by

1 *Dasi Pitchigadu*, (1883) 1 Weir 335.

2 *Nanjundappa*, Weir, 3rd Edn., 197.

3 *Bhagwan Din*,(1908)30 All. 568.

4 *Gutali*, (1908) 31 All. 148.

some soldiers who purchased it from an unknown vendor, it was held that he was guilty under this section[1].

Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section is similar to s. 327, the only difference being that the hurt caused under it is grievous.

Voluntarily causing hurt to extort confession, or to compel restoration of property.

330. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be also be liable to fine.

ILLUSTRATIONS.

(*a*) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b*) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c*) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d*) A, a Zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

[1] *Dhania Daji*, (1868) 5 B. H. C. (Cr. C.) 59.

COMMENT.

This section punishes the inducing of a person by causing hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial[1]. The principal object of this section is to prevent torture by the police. This section is similar to s. 327 which deals with causing of hurt for the purpose of extorting property or valuable security.

Abetment.—Where the accused stood by and acquiesced in an assualt on a prisoner committed by another policeman for the purpose of extorting a confession, it was held that he had committed an abetment of the offence under this section[2].

Voluntarily causing grievous hurt to extort confession or to compel restoration of property.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section is similar to the preceding section except that the hurt caused under it should be 'grievous.'

Voluntarily causing hurt to deter public servant from his duty.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

1 *Nim Chand Mookerjee*, (1873) 20 W.R. 41.

2 *Latifkhan*, (1895) 20 Bom. 394.

COMMENT.

The protection given by this section is not confined to public servants, but will also extend to persons acting in good faith by their directions. This section resembles s. 353. Under it there is causing of hurt to the public servant; under s. 353 there is assault or criminal force for the same purpose.

The expression 'in the discharge of his duty as such public servant' means in the discharge of a duty imposed by law on such public servant in the particular case, and does not cover an act done by him in good faith under colour of his office[1]. Suppose a warrant is handed to a Police officer for the arrest of a particular person. That warrant, on the face of it, does not direct him to break open premises, in order to effect the arrest, and yet it may be necessary for the officer in discharge of his duty in arresting the accused under the warrant to break into the accused's house, or to do some other act without the doing of which the warrant could not be executed. Such acts would be properly described as done or attempted to be done by the Police officer in the lawful discharge of his duty. If it was unnecessary to do such an act, and it was done, the act would not be done by the Police officer in the lawful discharge of his duty, and therefore would not be covered by the concluding portion of this section[2].

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section provides for the aggravated form of the offence dealt with in the last section. The hurt caused under it must be grievous.

Voluntarily causing hurt on provocation.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term, which may extend to

[1] *Dalip*, (1896) 18 All. 246.

[2] Per Edge, C. J., in *ibid*, pp. 250, 251.

one month, or with fine which may extend to five hundred rupees, or with both.

COMMENT.

This section serves as a proviso to ss. 323 and 324. See Comment on Exception 1 to s. 300.

Voluntarily causing grievous hurt on provocation.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as Exception 1, section 300.

COMMENT.

This section serves as a proviso to ss. 325 and 326.

Act endangering life or personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

COMMENT.

Rash and negligent acts which endanger human life, or the personal safety of others are punishable under this section even though no harm follows, and are additionally punishable under ss. 337 and 338 if they cause hurt or grievous hurt.

Many specific acts of rashness or negligence likely to endanger life or to cause hurt or injury are made punishable by Chapter XIV.

Section 279 punishes rash driving or riding; s. 280, rash navigation of a vessel; s. 284, rash or negligent conduct with respect to poisonous substance; s. 285, rash or negligent conduct with respect to any fire or combustible matter; s. 286, rash or negligent conduct with respect to any explosive substance; s. 287, negligent conduct with respect to any machinery in the possession of accused; s 288, negligence with respect to pulling down or repairing buildings; s. 289, negligence with respect to animals; s. 304-A, rash or negligent act causing death; s. 336, any rash or negligent act endangering life or personal safety of others; s. 337, rash or negligent act causing hurt; s. 338, rash or negligent act causing grievous hurt.

Causing hurt by act endangering life or personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.

Section 304-A deals with those cases where death is caused by rash or negligent act, this section, where hurt is caused.

This section applies only to acts done rashly or negligently but without any criminal intent.

CASES.

Negligence with reference to a gun.—The causing of hurt by negligence in the use of a gun was held to fall within the purview of this section rather than of s. 286. But where all the evidence against the accused was that he went out shooting when people were likely to be in fields and that a single pellet from his gun struck a man who was sitting in a field, it was held that this was not sufficient evidence of rashness or negligence to support a conviction under this section[1].

Negligent operation.—A Hakim performed an operation of the eye with an ordinary pair of scissors and the wound was sutured with an ordinary thread and needle. The instruments used were not disinfected and the complainant's eye-sight was permanently damaged. It was held that the Hakim had acted rashly and negligently and was guilty under this section, as there was no permanent privation of the sight of the eye[2].

Causing grievous hurt by act endangering life or personal safety of others.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

COMMENT.

The last section provided for 'hurt,' this section provides for 'grievous hurt' caused under similar circumstances.

CASES.

Sexual intercourse causing injury to wife.—A husband has not the absolute right to enjoy the person of his wife without regard to the question of

[1] *Abdus Sattar*, (1906) 28 All. 464.

[2] *Gulam Hyder Panjabi*, (1915) 17 Bom. L. R. 384.

safety to her. Hence, where a husband had sexual intercourse with his wife, aged eleven years, and she died from the injuries thereof, he was held guilty of causing grievous hurt by doing a rash act under this section[1]. Clause 5 of s. 375 will now make the husband guilty of rape also.

Running over by a carriage.—Where a person, by allowing his cart to proceed unattended along a road, ran over a boy who was sleeping on the road, it was held that he had committed an offence under s. 337 or 338[2].

Of Wrongful Restraint and Wrongful Confinement.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful restraint.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

ILLUSTRATION.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

COMMENT.

Wrongful restraint means the keeping a man out of a place where he wishes to be, and has a right to be[3]. The slightest unlawful obstruction to the liberty of the subject to go when and where he likes to go provided he does so in a lawful manner, cannot be justified, and is punishable under this section[4].

The following illustrations, given in the original Draft Code, further elucidate the meaning of this section :—

(*a*) A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.

(*b*) A illegally omits to take proper order with a furious buffalo which is in his possession and thus voluntarily deters Z from passing along a road along which Z has a right to pass. A wrongfully restrains Z.

(*c*) A threatens to set a savage dog at Z, if Z goes along a path along which Z has a right to go. Z is thus prevented from going along that path. A wrongfully restrains Z.

(*d*) In the last illustration, if the dog is not really savage, but if A voluntarily causes Z to think that it is savage, and thereby prevents Z from going along the path, A wrongfully restrains Z.

1 *Hurree Mohun Mythee*, (1890) 18 Cal. 49.

2 *Malkaji*, (1884) Unrep. Cr .C. 198.

3 Note M.

4 *Saminanda Pillai*, (1882) 1 Weir 339.

From these illustrations it will appear that a person may obstruct another by causing it to appear to that other impossible, difficult or dangerous to proceed, as well as by causing it actually to be impossible, difficult or dangerous for that other to proceed.

The obstruction under the section must be physical. A verbal prohibition or remonstrance does not amount to such obstruction. Where the complainant and his wife and daughter occupied a house and during their temporary absence the accused put a lock on the outer door and thereby obstructed them from getting into the house, it was held that the accused was guilty of wrongful restraint[1].

CASES.

Wrongful restraint.—Where the accused removed a ladder and thereby detained a person on the roof of a house[2], and where the accused prevented the complainants from proceeding in a certain direction with their carts and exacted from them a sum of money on a false plea[3], this offence was held to have been committed. Where a landlord prevented a tenant of his, who was holding over, from entering the room which the tenant had rented from him, it was held that he was guilty of this offence[4].

No wrongful restraint.—Where the accused placed an obstruction in a road over which the complainant had a right of passage for men and cattle, thereby preventing cattle from passing but leaving a portion of the way in such a condition as to be passable by human beings[5]; where A invited B to his house in order to be ready to give evidence in a judicial proceeding, and A used no physical coercion nor threat of any kind to detain B in the house, but C from a mere general dislike or dread of giving offence to A remained there[6]; and where the accused caused low class people to stand in a public street in the vicinity of a temple with the object of preventing the complainant from conducting a religious procession from fear of pollution[7]; this offence was not held to have been committed. The accused, one of the two joint-owners of a shop, put her lock on the shop which was let out by the other joint-owner without her consent. The tenant charged the accused with the offence of wrongful restraint in that he was prevented by the lock from entering into the shop. It was held that the accused had committed no offence inasmuch as she had affixed her lock to a house of which she was the joint-owner and the complainant was no tenant of hers[8].

1 *Arumuga Nadar*, [1910] M. W. N. 727.

2 *Telapolu Subbadu*, (1884) 1 Weir 340.

3 *Jowahir Shah* v. *Gridharee Chowdhry*, (1868) 10 W. R. 35.

4 *Haji Gulam Mahomed*, (1918 21 Bom. L. R. 261.

5 (1899) 1 Weir 340.

6 *Lakshman Kalyan*, (1875) Cr. R. of 1875, Unrep. Cr. C. 89.

7 *Venkata Subba Reddy*, (1910) 7 M. L. T. 366.

8 *Samrath*, (1917) 20 Bom. L. R 106.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding[1] beyond certain circumscribing limits[2], is said "wrongfully to confine" that person.

Wrongful confinement.

ILLUSTRATIONS.

(*a*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b*) A places men with firearms at the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

COMMENT.

Wrongful confinement, which is a form of wrongful restraint, is the keeping a man within limits out of which he wishes to go, and has a right to go[1]. There must be a total restraint, not a partial one. If one man merely obstructs the passage of another in a particular direction, whether by threat of personal violence or otherwise, leaving him at liberty to stay where he is or to go in any other direction, if he pleases, he cannot be said thereby to wrongfully confine him. Imprisonment is a total restraint of the liberty of the person, for however short a time, and not a partial obstruction of his will, whatever inconvenience it may bring on him[2].

The mere threat of some future harm in case of departure will not suffice if the prisoner knows that it is open to him to go away and refrains from doing so lest he may suffer such harm. But if the circumstances are such as to justify and to create the belief that he cannot depart without being seized immediately, then it would be proper to hold that he was obstructed and confined[3].

1. 'Prevent that person from proceeding.'—There can be no wrongful confinement when a desire to proceed has never existed, nor can a confinement be wrongful if it was consented to by the person affected[4].

The retaining of a person in a particular place, or the compelling of him to go in a particular direction, by force of an exterior will overpowering or suppressing in any way his own voluntarily action, is an imprisonment on the part of him who exercises that exterior will[5].

2. 'Certain circumscribing limits.'—"A prison may have its boundary large or narrow, vissible and tangible, or, though real, still in the conception only; it may itself be moveable or fixed: but a boundary it must have; and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, except by prison-breach. Some

1 Note M.

2 *Bird* v. *Jones*, (1845) 7 Q. B. 742, 751-52.

3 *Shamlal Jairam*, (1902) 4 Bom. L. R. 79.

4 *Muhammed Din*, (1893) P. R. No. 36 of 1894.

5 *Parankusam* v. *Stuart*, (1865) 2 M. H. C. 396.

confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of the definition of freedom to be able to go withersoever one pleases; but imprisonment is something more than the mere loss of this power: it includes the notion of restraint within some limits defined by a will or power exterior to our own[1]."

Moral force.—Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict, is sufficient, to constitute this offence[2].

Period of confinement.—The time during which a person is kept in wrongful confinement is immaterial, except with reference to the extent of punishment[3].

CASES.

Wrongful confinement.—Where a Police officer arrested, without a warrant, a British subject in British India on a charge of criminal breach of trust or other cognizable offence committed outside British India[4]; where a jail doctor confined an offender, who was already undergoing imprisonment, in a cell within the jail for the purpose of administering enema against his will[5]; where an Abkari Inspector detained a man all night to prevent his being tampered with[6]; and where a Police Constable detained some persons as suspects for several days and they were not fettered but made to stay in a circumscribed limit[7], the offence of wrongful confinement was held to have been committed.

Punishment for wrongful restraint.

341. Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful confinement.

342. Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

1 Per Coleridge, J., in *Bird* v. *Jones*, (1845) 7 Q. B. 742, 744.

2 *Venkatachala Mudali*, (1881) 1 Weir 341.

3 *Suprosunno Ghosaul*, (1866) 6 W. R. 88.

4 *Mukund Babu Vethe*, (1894) 19 Bom. 72.

5 *Baistab Charan Shaha*, (1902) 30 Cal. 95.

6 *Dhania* v. *F. L. Clifford*, (1888) 13 Bom. 376.

7 *Shamlal Jairam*, (1902) 4 Bom. L.R. 79.

Wrongful confinement for three or more days.

343. Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for ten or more days.

344. Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement of person for whose liberation writ has been issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

Wrongful confinement in secret.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement to extort property or constrain to illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person to do anything illegal or to give any information which may

facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

This and the next section may be compared with ss. 329 and 330, as the aggravating circumstances mentioned in the former are the same as those in the latter.

Wrongful confinement to extort confession, or compel restoration of property.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence, or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

This section may be compared with s. 330. In the former case confession is extorted by wrongful confinement; in the latter, by causing hurt.

Of Criminal Force and Assault.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Criminal force.

ILLUSTRATIONS.

(*a*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z; A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(*c*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here, A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact wit- Z. He has therefore intentionally used force to Z; and if he has done sh without Z's consent, intending or knowing it to be likely that he may thereo by injure, frighten or annoy Z, he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone

produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionlly uses force to her and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(*g*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(*h*) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

COMMENT.

The preceding section defined 'force.' This section says that 'force' becomes criminal (1) when it is used without consent and in order to the committing of an offence, or (2) when it is intentionally used to cause injury, fear, or annoyance to another to whom the force is used.

The term 'criminal force includes what in English law is called 'battery'. It will, however, be remembered that 'criminal force' may be so slight as not to amount to an offence (s. 95), and it will be observed that 'criminal force' does not include anything that the doer does by means of another person. The definition of 'criminal force' is so wide as to include force of almost every description of which a person is the ultimate object.

Illustrations.—The various illustrations exemplify the different ingre, dients of the definition of 'force' given in s. 349. Illustration (*a*) exemplifies 'motion'; ill. (*b*), 'change of motion'; ill. (*c*), 'cessation of motion'; ills. (*d*) (*e*), (*g*) and (*h*), 'bring that substance into contact with any part of that other's body'; ills. (*f*) and (*g*), 'other's sense of feeling'. Clause 1 of s. 349 is illustrated by ills. (*c*), (*d*), (*e*), (*f*) and (*g*); cl. 2, by ill. (*a*); and cl. 3, by ills. (*b*) and (*h*).

Assault.

351. Whoever makes any gesture, or any preparation[1], intending or knowing it to be likely[2] that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures

or preparations such a meaning as may make those gestures or preparations amount to an assault.

ILLUSTRATIONS.

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely, that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

COMMENT.

'Assault' is defined in this section.

It is not every threat, when there is no actual personal violence, that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect. If a person is advancing in a threatening attitude, with an intention to strike another, so that his blow will almost immediately reach the other, if he is not stopped, then this is an assault in point of law, though at the particular moment when he is stopped, he is not near enough for his blow to take effect[1].

Assault: criminal force.—An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. It seems to consist in an attempt or offer by a person having present ability with force to do any hurt or violence to the person of another. It is committed whenever a well-founded apprehension of immediate peril from a force already partially or fully put in motion is created. An assault is included in every use of criminal force[2].

Ingredients.—The section requires two things.—

1. Making of any gesture or preparation by a person in the presence of another.

2. Intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

1. 'Makes any gesture or any preparation.'—Illustration (a) illustrates that gestures which cause a person to apprehend that the person making them is about to use criminal force amount to an assault. It is an assault to point a loaded pistol at any one[3].

Though mere preparation to commit a crime is not punishable (see s. 511), yet preparation with the intention specified in the section amounts to an assault, see ill. (b).

[1] *Stephens* v. *Myers*, (1830) 4 C. & P. 349.

[2] M. & M. 309.

[3] *Jeremiah James*, (1844) 1 C. & K. 530.

2. 'Intending or knowing it to be likely, etc.'—Intention or knowledge is the gist of the offence.

English law.—An assault consists in an attempt or offer by a person, having present ability, with force to do any hurt or violence to the person of another. Striking at another with a cane, stick, or fist, although the blow misses, drawing a sword or a bayonet, or throwing a bottle or glass, with intent to wound or strike, presenting a loaded gun at a man within range, or any other act indicating an intention to use violence against the person of another, is an assault. Battery is defined to be "any least hurt or violence unlawfully and wilfully or culpably done to the person of another."

Explanation.—Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In the latter case the effect of the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force[1]. A preparation taken with words which would cause a person to apprehend that criminal force would be used to him, if he persisted in a particular course of conduct, does not amount to an assault, if there is no evidence to show that the accused was about to use criminal force to him then and there[2].

Punishment for assault or criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

[1] *Cama* v. *Morgan*, (1864) 1 B.H. C. 205.

[2] *Birbal Khalifa*, (1902) 30 Cal. 97.

COMMENT.

This section provides punishment for assault or use of criminal force when there are no aggravating circumstances.

See s. 300, exception 1, which is identical with this explanation.

Assault or criminal force to deter public servant from discharge of his duty.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

The public servant must be acting in the discharge of a duty imposed by law on him in the particular case, and the section will not protect him for an act done in good faith under colour of his office[1].

If hurt is caused under the circumstances mentioned in the section then either s. 332 or s. 333 will apply.

CASES.

Defect in warrant is no defence.—Where a warrant for the arrest of a person, in execution of a civil process, was not signed in full as required by s. 251 of the Criminal Procedure Code, but was initialled by the officer issuing it, and was resisted by the person when the officer to whom it was intrusted sought to execute it, it was held that the person was guilty under this section and the preliminary defect of the warrant formed no defence[2]. But if such warrant is signed by an unauthorised person resistance is not illegal[3].

Search without a proper order or warrant.—Where the accused resisted a public officer who attempted to search a house, in the absence of a proper written order authorizing him to do so, he was held to have committed no offence under this section[4]. But search without a search-warrant does not justify an obstruction or resistance to an officer, if he was acting in good faith and without malice[5].

Public servant must be acting in the execution of his duty.—Where a cart-owner refused to give his cart for the use of a Forest Settlement Officer, who required it as per executive orders of Government, and assaulted the peon in preventing him from seizing his cart, it was held that he could not be convicted of an offence under this section, because the rules aforesaid had

1 See *Dalip*, (1896) 18 All. 246 and *Raman Singh*, (1900) 28 Cal. 411, 414.

2 *Janki Prasad*, (1886) 8 All. 293.

3 *Jagpat Koeri*, (1918) 2 P. L. J. 487.

4 *Narain*, (1875) 7 N. W. P. 209.

5 *Pukot Kotu*, (1896) 19 Mad. 349

not the force of law, and a public servant acting under them was not acting in execution of his duty[1].

Assault or criminal force to woman with intent to outrage her modesty.

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

An indecent assault upon a woman is punished under this section. Rape is punished under s. 376; but the offence under this section is of less gravity than rape.

Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

The intention to dishonour may be supposed to exist when the assault or criminal force is by means of gross insults. An accused person while under trial struck a Sub-Inspector of Police who was in the witness-box giving evidence against him. It was held that he committed an offence under this section[2].

Assault or criminal force in attempt to commit theft of property carried by a person.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft of any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt wrongfully to confine a person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term

[1] *Rakhmaji*, (1885) 9 Bom. 558. 186.
[2] *Altaf Mian*, (1907) 27 A. W. N.

which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assault or criminal force on grave provocation.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same explanation as section 352.

COMMENT.

This section provides for mild punishment if the assault or criminal force is the result of grave and sudden provocation.

The word "last" in the Explanation is inaccurate. Instead of the word "the last" the word "this" should have been only used.

Of Kidnapping, Abduction. Slavery and Forced Labour.

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

COMMENT.

The literal meaning of 'kidnapping' is child-stealing.

Kidnapping is divided into two kinds. But there may be cases in which the two kinds overlap each other. For instance, a minor may be kidnapped from British India as well as from his lawful guardianship.

Kidnapping from British India.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

COMMENT.

This offence may be committed on a grown up person or a minor by conveying him or her beyond the limits of British India. If the person kidnapped is above twelve years age and has given consent to his or her being conveyed beyond the limits of British India, no offence is committed[1].

Ingredients.—This section requires two things:

(1) Conveying of any person beyond the limits of British India.

(2) Such conveying must be without the consent of that person.

[1] *Haribhai Dada,* (1918) 20 Bom. L. R. 372.

361. Whoever takes or entices any minor[1] under fourteen years of age, if a male, or under sixteen years of age, if a female, or any person of unsound mind,[2] out of the keeping of the lawful guardian[3] of such minor or person of unsound mind, without the consent of such guardian,[4] is said to kidnap such minor or person from lawful guardianship.

Kidnapping from lawful guardianship.

Explanation.—The words "lawful guardian[5]" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

COMMENT.

The object of this section is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons.

This offence may be committed in respect of either a minor or a person of unsound mind. To kidnap a grown-up person, therefore, would not amount to this offence.

Ingredients.—The section has four essentials :—

(1) Taking or enticing away a minor or a person of unsound mind.

(2) Such minor must be under fourteen years of age if a male, or under sixteen years of age, if a female.

(3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.

(4) Such taking or enticing must be without the consent of such guardian.

1. 'Takes or entices any minor.'—The taking need not be by force, actual or constructive, and it is immaterial whether the girl consents or not[1]. There must be a taking of the child out of the possession of the parent. If a child leaves its parents' house for a particular purpose with their consent, it cannot be said to be out of the parents' keeping. A mere leading of a not unwilling child would be sufficient.

The period of detention is immaterial to the offence.

[1] *Manktelow*, (1853) 6 Cox 143.

When 'taking' is complete.—A Full Bench of the Calcutta High Court has decided that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as the minor is kept out of such guardianship. The act of taking is not, in the proper sense of the term, a continuous act: when once the boy or girl has been actually taken out of the keeping, the act is a completed one[1].

The Madras High Court is of opinion that so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted[2]. In the above Calcutta case this ruling has been distinguished on the ground that this was a case of kidnapping out of British India, and, as, when the accused in this case intervened, the minor had not been actually taken out of British India, the process of taking was regarded as still going on, or continuing. The Madras High Court has in a subsequent case approved of the view of the Calcutta High Court in *Nemai's case*[3].

The Allahabad High Court has laid down that the offence of kidnapping from lawful guardianship is not a continuing offence[4]. The offence is completed so soon as the minor is actually taken out of the custody of his or her guardian. There can be no abetment of this offence in such a case on the hypothesis that the offence is a continuing one. But if there is a conspiracy before the kidnapping takes place, a conviction for abetment of kidnapping can be sustained[5].

The Punjab Chief Court has taken the same view as the Calcutta and Allahabad High Courts[6]. The offence of kidnapping not being a continuing one there could be no abetment of the taking after the minor had once been completely taken out of the keeping of her lawful guardian[7].

'Enticing' is an act of the accused by which the person kidnapped is induced of his own accord to go to the kidnapper.

2. 'Under fourteen years of age if a male or under sixteen years of age, if a female'.—In the case of a boy the age limit is fixed at fourteen years; in the case of a girl it is fixed at sixteen. Where the minor kidnapped is a girl under sixteen years of age, it is no defence that the accused did not know the girl to be under sixteen, or that from her appearance he might have thought she was of a greater age[8]. Any one dealing with such a girl does so at his peril, and if she turn out to be under sixteen he must take the consequences[9], even though he *bona fide* believed and had reasonable ground for believing that she was over sixteen[10].

1 *Nemai Chattoraj*, (1900) 27 Cal. 1041, F. B.
2 *Samia Kaundan*, (1876) 1 Mad. 173.
3 *Chekutty*, (1902) 26 Mad. 454.
4 *Ram Dei*, (1896) 18 All. 350; *Ram Sundar*, (1896) 19 All. 109.
5 *Tika*, (1903) 26 All. 197.
6 *Chanda*, (1892) P. R. No. 6 of 1894.
7 *Durga Das*, (1904) P. R. No. 13 of 1904.
8 *Robins*, (1844) 1 C. & K. 456.
9 *Christian Olifier*, (1866) 10 Cox 402.
10 *Prince*, (1875) L. R. 2 C. C. R. 154.

3. 'Out of the keeping of the lawful guardian.'—The word 'keeping' connotes the fact that it is compatible with independence of action and movement in the object kept. It implies neither prehension or detention but rather maintenance, protection and control, manifested not by continual action but as available on necessity arising. And this relation between the minor and the guardian is not dissolved so long as the minor can at will take advantage of it and place herself within the sphere of its operation[1].

There must be a taking or enticing of a child out of the keeping of the lawful guardian without his consent. Where, therefore, a girl had run away from home in consequence of ill treatment, and, on meeting the prisoner on the road, had agreed to take service as a coolie and went with him, it was held that this offence was not committed[2]. In such cases it cannot be said that she was taken or enticed away out of the keeping of the lawful guardian[3].

If the minor is not in the custody of a lawful guardian the offence cannot be committed whatever the belief of the taker may be[4].

According to Mahomedan law the occurrence of puberty determines minority and the mother's right to custody, but under this section regard must be had only to the definition of minority in s. 3 of the Indian Majority Act[5].

4. 'Without the consent of such guardian.'—The consent of the minor is immaterial[6].

If a man by false and fraudulent representations induce the parents of a girl to allow him to take her away, such taking will amount to kidnapping[7]. Consent given by the guardian after the commission of the offence would not cure it[8].

Explanation—'Lawful guardian.'—The explanation is intended to extend the protection given to parents to any person lawfully entrusted with the care or custody of the minor. The fact that a father allows his child to be in the custody of a servant or a friend, for a limited purpose and for a limited time, cannot determine the father's rights as guardian or his legal possession for the purposes of the criminal law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor the latter must be held to be in the father's possession or keeping even though the actual physical possession should be temporarily with a friend or other person[9].

The word 'lawful' does not necessarily mean that the person who entrusts a minor to the care or custody of another must stand in the position of a person having a legal duty or obligation to the minor. The entrusting of the minor to the care or custody of another must be effected without

1 *Jetha Nathoo*, (1904) 6 Bom. L. R. 785.
2 *Gunder Singh*, (1865) 4 W. R. 6.
3 *Ewaz Ali*, (1915) 37 All. 624.
4 *Hardeo*, (1879) P. R. No. 7 of 1880.
5 *Muthu Ibrahi*, (1913) 37 Mad. 567.
6 *Bhungee Ahur*, (1865) 2 W.R. 5.
7 *James Hopkins*, (1842) C. & M. 254.
8 *Ganesh*, (1909) 31 All. 448.
9 *Jagannadha Rao* v. *Kamaraju*, (1900) 24 Mad. 284, 291.

illegality or the commission of an unlawful act by a person legally competent to do so[1].

Hindu law.—A father is the guardian of his children and is ordinarily entitled to their custody. A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily, the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. If a mother removes a girl from her father's house for the express purpose of marrying her without his consent, it will amount to a taking out of the keeping of the lawful guardian[2].

The mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child to a person who accepts the trust and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor[3].

The husband of a Hindu girl of fifteen is her lawful guardian; and, if the father of the minor takes away the girl from her husband, without the latter's consent, such taking away amounts to kidnapping from lawful guardianship even though the father may have had no criminal intention in so doing[4]. The husband's relations within the degree of a *sapinda* are guardians of a minor widow in preference to her father or his relations[5].

Mahomedan law.—Under Mahomedan law, if the father takes away a son under seven years, or a daughter under puberty, if *sunni*, or under seven years, if *shiah*, or an illegitimate child from the custody of the mother, he can be said to kidnap his own child, because the mother is by law the lawful guardian[6]. According to Sunni law, the mother is the guardian of her daughter till she reaches puberty which is presumed when the daughter completes her fifteenth year. Even a divorced wife is entitled to the custody of her children[7]. After mother come the father and other relations standing within prohibited degrees.

The husband becomes the guardian of his wife after she attains puberty.[8] Removal of a girl of eleven or twelve from the custody of her mother-in-law at the instigation of her mother is held not to be kidnapping[9].

CASES.

Taking away out of the keeping of the lawful guardian.—Where a person carried off, without the consent of her father, a girl to whom he was betroth-

1 *Mussammat Kesar*, (1918) 4 P.L.J. 74.

2 *Prankrishna Surma*, (1882) 8 Cal. 969.

3 *Pemantle*, (1882) 8 Cal. 971; *Mussammat Soma*, (1916) P. R. No. 17 of 1916.

4 *Dhuronidhur Ghose*, (1889) 17 Cal. 298.

5 *Tek Chand*, (1915) P. R. No 27 of 1915.

6 *Nur Kadir* v. *Zuleikha Bibi*, (1885) 11 Cal. 649; *Hamid Ali* v. *Imtiazan*, (1878) 2 All. 71; *Idu* v. *Amiran*, (1886) 8 All. 322.

7 *Ayshabai*, (1904) 6 Bom. L. R. 536; *Zarabibi* v. *Abdul Rezzak*, (1910) 12 Bom. L. R. 891.

8 *Nur Kadir* v. *Zuleikha Bibi*, (1885) 11 Cal. 649.

9 *Korban*, (1904) 32 Cal. 444.

ed by her father, because the father suddenly changed his mind and broke off the marriage, it was held that he was guilty of kidnapping[1].

Marrying a girl without the consent of her lawful guardian.—Where the mother had assigned by a will the guardianship of her minor daughter, and the duty of marrying her to R, and a paternal relative of the daughter removed her by fraud and force for the purpose of getting her married to a person other than the one selected by R, it was held that the paternal relative were guilty of kidnapping as well as abducting[2]. Where a Hindu woman left her husband's house with her infant daughter, and went to the house of A, and on the same day the daughter was married to B, the brother of A, without the father's consent, it was held that A had committed an offence, under ss. 109 and 363, of abetting the offence of kidnapping[3].

Kidnapping from guardianship not a continuing offence.—J, a minor girl, was taken away from her husband's house to the house of R and there kept for two days. Then one M came and took her away to his own house and kept her there for twenty days, and subsequently clandestinely removed her to the house of the petitioner, and from that house the petitioner and M took her through different places to Calcutta. It was held that the taking away out of the guardianship of the husband was complete before the petitioner joined the principal offender in taking the girl to Calcutta, and that the petitioner, therefore, could not be convicted under s. 363[4].

Temporary guardianship does not oust lawful guardian's right.—Where a girl who was under the temporary guardianship of a person was taken away with his consent and married to a boy without the consent of her father, this offence was held to have been committed[5].

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction.

COMMENT.

This section merely gives a definition of the word 'abduction,' which occurs in some of the penal provisions which follow. There is no such offence as abduction under the Code, but abduction with certain intent is an offence. Force or fraud is essential.

Abduction and Kidnapping.—(1) 'Kidnapping' is committed only in respect of a minor or person of unsound mind; 'abduction', in respect of any person.

(2) In 'kidnapping', the person kidnapped is removed out of lawful guardianship: in 'abduction', this is not necessary.

1 *Gooroodoss Rajbunsee*, (1865) 4 W. R. 7.

2 *Bai Mahakor*, (1895) Cr. R. No. 66 of 1895, Unrep. Cr. C. 820.

3 *Prankrishna Surma*, (1882) 8 Cal. 969.

4 *Nemai Chattoraj*, (1900) 27 Cal. 1041, F. B.

5 *Jagannadha Rao* v. *Kamaraju*, (1900) 24 Mad. 284.

(3) In 'kidnapping' the minor is simply taken away or enticed to go with the kidnapper; in 'abduction', force, compulsion, or deceitful means are used.

Continuing offence.—The offence of abduction is a continuing offence and a girl is being abducted not only when she is first taken from any public place but also when she is removed from one place to another[1].

Abetment.—A married woman cannot abet her own abduction as herein defined[2].

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which extent to seven years, and shall also be liable to fine.

Punishment for kidnapping.

364. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

ILLUSTRATIONS.

(*a*) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b*) A forcibly carries or entices B away from his home in order that B may be murderd. A has committed the offence defined in this section.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or know-

Kidnapping or abducting woman to compel her marriage, etc.

[1] *Ganga Dei*, (1914) 12 A.L.J.R. 91.

[2] *Natha Singh*, (1883) P.R. No. 11 of 1883.

ing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

Where a woman has no intention of marriage or illicit intercourse when kidnapped, this section applies.

Ingredients.—The section requires—

1. Kidnapping or abducting any woman.
2. Such kidnapping or abducting must be—
   (i) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will; or
   (ii) in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.

It is immaterial whether the woman kidnapped is a married woman or not. The word 'marry' in the section implies going through a form of marriage whether the same is in fact valid or not[1].

Sheltering girls with a view to prostitute themselves.—Where two girls under the age of sixteen years ran away from their houses and remained for one or two days in the house of a woman of quality and no report was made to the Police, it was held that the woman in whose house the girls stayed was guilty of an offence under this section[2].

Kidnapping or abducting in order to subject person to grievous hurt slavery, &c.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisoment of either description for a term which may extend to ten years, and shall also be liable to fine.

Wrongfully concealing or keeping in confinement kidnapped or abducted person.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such

1 *Taher Khan*, (1917) 45 Cal. 641. 2 *Jasauli*, (1912) 34 All. 340.

person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

COMMENT.

This section does not apply to the principal offender but to those persons who assist him in concealing a kidnapped or abducted person. This is one of those sections in which subsequent abetment is punished as substantive offence.

Kidnapping or abducting child under ten years with intent to steal from its person.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave[1], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

The sections of the Code relating to slavery were enacted for the suppression of slavery, not only in strict and proper sense, namely, that condition whereby an absolute and unlimited power is given to the master over the life, fortune or liberty of another, but in any modified form where an absolute power is asserted over the liberty of another[1].It is directed against attempts to place persons in the position of slaves, or to treat them in a way that is inconsistent with the idea of the person so treated being free as to his property, services, or conduct, in any respect[2].

Ingredients.—This section makes penal—

(i) the importation, exportation, removal, buying, selling, of a person as a slave:

(ii) the disposal of a person as a slave; and

(iii) the acceptation, reception or detention, of any person against his will as a slave.

1. **'As a slave.'**—'Slave' is a creature without any rights or any status whatsoever, who is, or may become the property of another as a mere

1 *Ram Kuar*, (1880) 2 All. 723. 2 *Ibid*, p. 727.

chattel, the owner having absolute power of disposal by sale, gift, or otherwise, and even of life or death, over the slave, without being responsible to any legal authority[1].

There must be a selling or disposal of a person 'as a slave,' that is, a selling or disposal whereby one who claims to have a property in the person as a slave transfers that property to another[2].

Buying girls for marriage.—Buying or importing girls with a view to marriage is not punishable under this section[3]. Where, R having obtained possession of D, a girl of eleven years of age, disposed of her to a third person for value, with intent that such person should marry her, and such person received her with that intent, it was held that R could not be convicted of disposing of D as a slave under this section[4].

CASES.

Selling of a girl.—A kidnapped a Hindu girl, and sold her to B, a Mahomedan; B made her a Mahomedan, changed her name, supplied her with food and clothes, but gave her no wages. She was employed in menial services, and was not allowed to leave the house. After staying thus for four years the girl escaped. It was held that B had committed an offence under this section[5].

Buying of a girl.—S transferred to A for Rs. 25 his rights in the person of B, a girl of thirteen years. In a document in which the transaction was recorded, B was described as a slave girl purchased by S from P. It was held that A was guilty of buying B as a slave[6].

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

COMMENT.

This section is provided for the punishment of the slave-trader who is habitually engaged in the traffic of buying and selling human beings. The last section dealt with the casual offenders.

Selling minor for purposes of prostitution, &c.

372. Whoever sells, lets to hire, or otherwise disposes of[1] any minor under the age of sixteen years with intent that such minor shall be employed or used for the purpose of prostitution[2] or for any unlawful and immoral purpose, or

1 Per Stuart, C. J., in *Ram Kuar*, (1880) 2 All. 723, 726, F. B.
2 Per Oldfield, J., in *Ibid*, p. 731.
3 *Roda*, (1867) P.R. No. 19 of 1867.
4 *Ram Kuar*, *supra*.
5 *Mirza Sikundur Bukhut*, (1871) 3 N. W. P. 146. This has been pronounced to be a most extraordinary decision by Stuart, C. J., in *Ram Kuar's case*, *supra*.
6 *Amina*, (1884) 7 Mad. 277.

knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The gist of the offence under this section or s. 373 consists in the intention that the minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or in the knowledge that it is likely that such minor will be employed or used for any such purpose[1].

Scope.—This section applies to married as well as unmarried female minors[2] even where the minor, prior to sale or purchase, was leading an immoral life[3]. It also applies where the minor is a member of the dancing-girl caste[4].

This section deals with the person who sells a minor; the next section punishes the person who buys such minor.

1. 'Sells, lets to hire, or otherwise disposes of.'—There must be making over of a minor either in perpetuity or for a term and not for the commission of an immoral act of sexual intercourse. Where a young prostitute under sixteen years of age was brought to a house of assignation by the accused at the request of the complainant and for his supposed use on that one occasion, it not being contemplated that the girl should be sold or let out for a period of employment, or for the purpose of being employed by the complainant as a prostitute, or for the purpose of being disposed of by him for that course of life, it was held that such a letting out by the accused was not within the meaning of s. 372, which contemplates a case of letting or hiring or other similar transaction by which the possession of a girl is obtained with the intention of employing her habitually for the purpose of indiscriminate sexual intercourse[5].

2. 'With intent that such minor shall be employed or used for the purpose of prostitution.'—It is necessary to shew that the accused intended that the minor *shall* be employed for an immoral purpose. Where a dancing-girl adopted a daughter, it was held that she had committed no offence if the girl was to be brought up as a daughter, although the girl might have her choice of following the profession of prostitute or marrying; and that she would be guilty under the section if the girl was adopted in order to follow the profession as a minor[6].

Dev Dasi.—The dedication of minors to the service of a temple as *dasis* amounts to a disposal of such minors, knowing it to be likely that they will be used for the purpose of prostitution, within the meaning of this section[7].

[1] *Khushala*, (1880) P. R. No. 27 of 1880.
[2] *Kammu*, (1878) P. R. No. 12 of 1879.
[3] *Ismail Rustomkhan*, (1906) 8 Bom. L. R. 236.
[4] *Ramanna*, (1889) 12 Mad. 273.
[5] *Sukee Kaur*, (1893) 21 Cal. 97.
[6] *Ramanna*, (1889) 12 Mad. 273; *Papa Sani*, (1899) 23 Mad. 159.
[7] (1881) 1 Weir 359, F. B.; *Basava*, (1891) 15 Mad. 75; *Jaili Bhavin*, (1869) 6 B. H. C. (Cr. C.) 60; *Tippa*, (1892) 16 Bom. 737.

373. Whoever buys, hires or otherwise obtains possession[1] of any minor under the age of sixteen years[2] with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Buying minor for purposes of prostitution, &c.

COMMENT.

This section applies to the case of buying or hiring or other similar transaction by which complete possession of a girl is obtained with the intention of employing or using her habitually for the purpose of indiscriminate sexual intercourse with a man. It is intended to prevent trafficking in the employment or use of minors as prostitutes, or for a purpose both immoral and unlawful. This section is a counterpart of s. 372. The two sections conjointly punish both the giver as well as the receiver of a minor for an immoral purpose.

1. **'Buys, hires, or otherwise obtains possession.'**—It is not essential to the offence that the buying, hiring or other obtaining of the possession of the minor should be from a third person. The language of the section is quite applicable to an agreement or understanding come to with the minor without the intervention of a third person, and the vice against which the section is directed is certainly not of any less enormity in the latter case.

The offence is complete so soon as the obtaining possession with the requisite intention or knowledge of the minor is accomplished, though the minor may never enter upon prostitution until years after she has attained maturity, or may never enter upon such a profession at all[1]. But it is not intended to make punishable the buying, hiring or otherwise obtaining possession for a single act of sexual intercourse with the person so obtaining possession[2]. The employment for prostitution must be habitual.

2. **'Minor under the age of sixteen years.'**—The offence will not be constituted if, notwithstanding the existence of the requisite guilty intention or knowledge, the employment that is intended or known to be likely is to take place after the completion of the sixteenth year by the minor[3].

Sections 372 and 373.—Both the sections relate to the same subject-matter. The former contemplates an offence committed by the person who sells, lets to hire, or otherwise disposes of, any minor under the age of sixteen years, with the requisite intent or knowledge. The latter relates to the case of the person who buys, hires, or otherwise obtains possession of, any minor

1 *Chanda*, (1895) 18 All. 24.

2 *Dowlath Bee* v. *Shaik Ali*, (1870) 5 M. H. C. 473, 479.

3 *The Deputy Legal Remembrancer* v. *Karuna Baistobi*, (1894) 22 Cal. 164, 172.

under the age of sixteen[1]. The first section strikes at any bargain of the nature contemplated by it, whoever may be the party who sells or lets the minor, even though it should be the father or mother or lawful guardian. The second strikes at the bawds, keepers of brothels, and all others who fatten on the profits arising from the general prostitution of the girls.

374. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Unlawful compulsory labour.

COMMENT.

This section is intended to put a stop to the practice of forced labour which was and is still to a certain extent in vogue in this country.

Ingredients.—The section requires—

1. Unlawful compulsion of any person.
2. The unlawful compulsion must be to labour against the will of that person.

This section is aimed at the abuses arising from forced labour which ryots were in former times compelled to render to great landholders.

Where the accused induced the complainants, who, he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off their debts, and the complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants, and he insisted on their working for him, and punished them by beating them if they did not do so, it was held that a conviction under this section could not be uphelp though the act of the accused came within s. 352[2].

Of Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

Rape.

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

[1] *Subee Raur*, (1893) 21 Cal. 97, 98.

[2] *Madan Mohan Biswas*, (1892) 19 Cal. 572.

Fifthly.—With or without her consent, when she is under twelve years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under twelve years of age, is not rape.

Punishment for rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also liable to fine.

COMMENT.

Ingredients.—The section requires two essentials :—

(1) Sexual intercourse by a man with a woman.

(2) The sexual intercourse must be under circumstances falling under any of the five clauses in the section.

Second clause.—It is no defence that the woman consented after the fact[1].

Sexual intercourse with an idiot or drunken person.—Where a man had carnal knowledge of a girl of imbecile mind, and the jury found that it was without her consent, she being incapable of giving consent from defect of understanding, it was held that this amounted to rape[2]. Where the accused made a woman quite drunk, and whilst she was insensible violated her person, it was held that this offence had been committed[3].

Passive non-resistance or consent obtained by fraud.—If a girl does not resist intercourse in consequence of misapprehension, this will not amount to a consent on her part. Where a medical man, to whom a girl of fourteen years of age was sent for professional advice, had criminal connection with her, she making no resistance from a *bona fide* belief that he was treating her medically, it was held that he was guilty of rape[4].

Fifth clause.—There may be cases in which the check of the law may be necessary to restrain men from taking advantage of their marital right prematurely. Instances of abuse by the husband in such cases will fall under this clause.

Explanation.—The only thing to be ascertained is whether the private parts of the accused did enter into the person of the woman. It is not necessary to enter into any nice discussion as to how far they entered[5].

Exception.—A man cannot be guilty of rape on his own wife when she is over the age of twelve years, on account of the matrimonial consent she has

1 Hawk, c. 16, s. 7.

2 *Fletcher*, (1859) 8 Cox 131.

3 *William Camplin*, (1845) 1 Cox 220.

4 *William Case*, (1850) 4 Cox 220.

5 *Henry Allen*, (1839) 9 C. & P. 31.

given which she cannot retract. But he has no right to enjoy her person without regard to the question of safety to her[1].

Indecent assault is not attempt to commit rape.—Indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance[2].

English law.—A boy under fourteen years of age cannot be convicted of rape. The rule of common law is that in regard to the offence of rape *malitia non supplet eatatem* ; a boy under fourteen is under a physical incapacity to commit the offence. This presumption has no application to India[3]. A boy under fourteen can be convicted of an indecent assault under the Criminal Law Amendment Act[4].

Of Unnatural Offences.

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

COMMENT.

This section is intended to punish the offences of sodomy, buggery, and bestiality.

This offence consists in a carnal knowledge committed against the order of nature by man with man, or in the same unnatural manner with woman, or by man or woman in any manner with beast.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

1. Theft.
2. Extortion.
3. Robbery.
4. Dacoity.
5. Criminal Misappropriation of Property.
6. Criminal Breach of Trust.
7. Receiving of Stolen Property.
8. Cheating.
9. Fraudulent Deeds.
10. Mischief.
11. Criminal Trespass.

[1] *Hurree Mohun Mythee*, (1890) 18 Cal. 49.
[2] *Shankar*, (1881) 5 Bom. 403.
[3] *Paras Ram Dube*, (1915) 37 All. 187.
[4] 48 & 49 Vic., c. 69, ss. 4, 9; *Williams*, [1893] 1 Q. B. 320.

Of Theft.

378. Whoever, intending to take dishonestly[1] any moveable property[2] out of the possession of any person[3] without that person's consent,[4] moves[5] that property in order to such taking, is said to commit theft.

Theft.

Explanation 1[6].—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means cause an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

ILLUSTRATIONS.

(*a*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(*b*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it.

not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g*) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l*) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly: A has therefore committed theft.

(*m*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asks charity from Z's wife. She gives A money, food and clothes which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression A has not committed theft.

(*o*) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

The offence of theft under the Penal Code differs materially from the offence known as larceny in the English law.

Larceny is the wilful and wrongful taking away of the goods of another against his consent and with the intent to deprive him permanently of his property.

Differences between Larceny and Theft.—(1) Under larceny, the stolen property should be the property of some one; whereas under theft it should be in the possession of some one.

(2) Under theft, everything becomes its object which is moveable, *i.e.*, capable of being severed from its place. Hence, it is theft to severe and remove things which are attached to the ground, such as trees, vegetables, &c. In larceny, no offence is committed if the objects removed "savour of the realty, and are, at the time they are taken, part of the freehold."

(3) Under larceny, it is necessary to show an intention to appropriate a chattel and exercise an entire dominion over it. If it be taken with the intention of making a temporary use of it only, and then of letting the owner have it again, there is no larceny[1]. Under theft, it makes no difference that the person does not intend to assume entire dominion over the property taken, or to retain it permanently.

(4) Under larceny, it must be shown that the taking was against the person's consent and was not only wrongful and fraudulent, but was also "without any colour of right"; under theft, it will be sufficient to show that it was without his consent.

(5) To constitute theft it is not necessary to prove that the thief ever had the stolen thing in his power; but there can be no larceny even if there has been an actual removal, if the offender never had the thing in his power.

(6) Theft may be committed though the person from whom the thing is taken has no title thereto; in the case of Larceny the alleged owner should have some (general or special) ownership of it, and it must have been taken out of the owner's actual or constructive possession.

Ingredients.—In order to constitute theft five factors are essential:—

(1) Dishonest intention to take property;

(2) the property must be moveable;

(3) it should be taken out of the possession of another person;

(4) it should be taken without the consent of that person; and

[1] *Trebilcock*, (1858) 27 L. J. M. C. 103.

(5) there must be some removal of the property in order to accomplish the taking of it.

1. **'Intending to take dishonestly.'**—Intention is the gist of the offence. The intention to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another person. Where, therefore, the prisoner, acting *bona fide* in the interests of his employers, finding a party of fishermen poaching on his master's fisheries, took charge of the nets and retained possession of them, pending the orders of his employers, it was held that he was not guilty of theft[1]. The intention to take dishonestly must exist at the time of the moving of the property [*vide* ill. (*h*)]. If the act done was not done *animo furandi*, it will not amount to theft[2]. Where the owner is kept out of possession temporarily not with any such intention, but only with the object of causing him trouble in the sense of mere mental anxiety, and with the ultimate intention of restoring the thing to him without exacting or expecting any recompense the detention does not amount to causing wrongful loss in any sense[3].

Taking need not be with the intention of retaining property permanently.—It is not necessary that the taking should be permanent or with an intention to appropriate the thing taken [*vide* ill. (*l*)[4].]

No wrongful gain is necessary.—It matters not whether the intention of the thief was or was not to derive a profit from such crime[5]. Thus where the accused took the complainant's three cows against her will and distributed them among her creditors, he was found guilty of stealing[6]. It makes no difference in the prisoner's guilt that the act was not intended to procure any personal benefit to himself. Could it be said that a servant would not be guilty of theft if he were to deliver over his master's plate to a pressing tailor, and tell him to pay himself?

Bona fide dispute.—Where property is removed in the assertion of a contested claim of right, however ill-founded that claim may be, the removal thereof does not constitute theft[7]. The dispute as to ownership must be *bona fide*. A mere colourable pretence to obtain or keep possession of property does not avail as a defence[8].

Mistake.—When a person takes another man's property, believing, under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft because there is no dishonest intention, even though he may cause wrongful loss[9].

Stealing one's own property.—A person can be convicted of stealing his own property if he takes it dishonestly from another : see ills. (*j*) and (*k*). Where the accused took a bundle belonging to himself, which was in the

[1] *Nobin Chunder Holdar*, (1866) 6 W. R. 79.
[2] *Thomas Bailey*, (1872) L. R. 1 C. C. R. 347.
[3] *Nabi Baksh*, (1897) 25 Cal. 416.
[4] *Sri Churn Chungo*, (1895) 22 Cal. 1017, F. B ; *Nagappa*, (1890) 15 Bom. 344.
[5] *William Cabbage*, (1815) R. & R. 292.
[6] *Madaree Chowkeedar*, (1865) 3 W. R. 2.
[7] *Algaraswami Tevan*, (1904) 28 Mad. 304.
[8] *Arfan Ali*, (1916) 44 Cal. 66. *Nagappa*, (1890) 15 Bom. 344.

possession of a Police Constable and for which the Constable was accountable, it was held that the Constable had special property in it and that therefore the accused was guilty of theft[1]. The accused could have been excused only on the ground that he acted in an honest assertion, that is, in good faith, of his own right. But his furtive action excluded this supposition. He could not reasonably have supposed that he was legally warranted in taking possession as he did.

Liability of servant for an act done at the direction of the master.—A servant is not guilty of the offence of theft when what he does is at his master's bidding, unless it is shown that he participated in his master's knowledge of the dishonest nature of the acts. There must be some evidence from which such knowledge on the part of the servant can be inferred[2].

Cases.—Dishonest intention.—The accused was the brother of a farmer or contractor of a public ferry. He seized a boat belonging to the complainant while conveying passengers across the creek which flowed into the river at a point within three miles from the public ferry. His intention was apparently to compel persons who had to cross the creek to use the ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from fees to be paid by passengers crossing the creek. The accused had no reason to believe that he was justified in seizing the boat. It was held that the accused was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession[3]. Where the accused was found to have loosed the complainant's cattle at night from a cattle pen, and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for their release, it was held that the offence committed was that of theft[4]. The accused, an employee of a Steamer Company, whose business it was to check the tickets of passengers, asked to see the complainant's ticket but the complainant not having got one, the accused took possession of his umbrella as security that he might be compelled to pay his fare, it was held that he was not guilty of theft[5].

Removal of debtor's property by creditor to enforce payment of debt.—A creditor who took moveable property out of his debtor's possession, without his consent, with the intention of coercing him to pay his debt, was held to have committed the offence of theft[6]. The accused, a shipowner, alleging that money was due to him on account of certain transactions with the complainant, seized the complainant's goods which were in transit to another ship-owner and detained them. It was held that he was guilty of theft[7].

[1] *Sheikh Husan*, (1887) Unrep. Cr. C. 343.

[2] *Hari Bhuimali*, (1905) 9 C. W. N. 974.

[3] *Nagappa*, (1890) 15 Bom. 344.

[4] *Paryag Rai* v. *Arju Mian*, (1894) 22 Cal. 139.

[5] *Matabbar Shekh*, (1910) 14 C.W. N. 936.

[6] *Sri Churn Chungo*, (1895) 22 Cal. 1017, F.B., overruling *Prosonno Kumar Patra* v. *Udoy Sant*, (1895) 22 Cal. 669; *Agha Muhammad Yusuf*, (1895) 18 All. 88.

[7] *U. Si Noor Mahomed*, (1883) Weir (3rd Edn.), 246.

Obtaining cigarette from an automatic box.—Against the wall of a public passage was fixed what is known as an 'automatic box,' the property of a company. In such box was a slit of sufficient size to admit a penny piece, and in the centre of one of its sides was a projecting button or knob. The box was so constructed that upon a penny piece being dropped into the slit and the knob being pushed in a cigarette would be ejected from the box on to a ledge which projected from it. Upon the box were the following inscriptions. "Only pennies not half-pennies;" "To obtain an Egyptian beauties cigarette place a penny in the box and push the knob as far as it will go." The accused went to the entrance of the passage, and one of them dropped into the slit in the box a brass disc, about the size and shape of a penny, and thereby obtained a cigarette, which he took to the other prisoners. It was held that the accused were guilty of larceny[1].

2. 'Moveable property'.—Explanations 1 and 2 state that things attached to the land may become moveable property by severance from earth, and that the act of severance may of itself be theft [*vide* ill. (*a*)]. Thus, the thief who severs and carries away is put in exactly the same position as if he carried away what had previously been severed. A sale of trees belonging to others and not cut down at the time of sale does not constitute a theft[2].

It is not necessary that the thing stolen must have some appreciable value.

In animals *feræ naturæ* there is no absolute property. There is only a special or qualified right to take and kill them. When killed upon the soil they become the absolute property of the owner of the soil. But before there can be a conviction for larceny for taking anything not capable in its original state of being the subject of larceny it is necessary that the act of taking away should not be one continuous act with the act of severance or other act by which the thing becomes a chattel and so is brought within the law of larceny. If a man kills a rabbit and carries it away at once it is not larceny. It will not be larceny even if he kept them for some time on the land of the person on whose grounds they are killed, provided the whole transaction can be regarded as a continuous one[3].

Cases.—Earth and Stones.—Cart loads of earth[4] or stones[5] quarried and carried away from the land of another are subject of theft.

Salt.—Salt spontaneously formed on the surface of a swamp appropriated by Government[6] or in a creek under the supervision of Government[7] is subject of theft; but not that which is formed on a swamp not guarded by Government[8].

1 *Hands*, (1887) 16 Cox 188.

2 *Balos*, (1862) 1 Weir 419.

3 *Lewis Townley*, (1870) L. R. 1 C. C. R. 315.

4 *Shivram*, (1891) 15 Bom. 702.

5 *Suri Venkatappayya Sastri* v. *Madula Venkanna*, (1904) 27 Mad. 531, F. B.

6 *Tamma Ghantaya*, (1881) 4 Mad. 228.

7 *Mansang Bhavsang*, (1873) 10 B. H. C. 74.

8 *Government Pleader*, (1883) 1 Weir 413.

Human body.—A human body whether living or dead is not moveable property[1].

Gas.—A, having contracted with a gas company to consume gas and pay according to meter, in order to avoid paying for the full quantity of gas consumed, introduced into the entrance pipe another pipe for the purpose of conveying the gas to the exit pipe of the meter, and so to the burners, for consumption without passing through the meter itself. The entrance pipe was the property of A, but he had not by his contract any interest in the gas until it passed through the meter. It was held that A was guilty of larceny[2].

Water.—Water supplied by a water company to a consumer, and standing in his pipes, may be the subject of larceny[3]; but not water running freely from a river through a channel made and maintained by a person[4].

Animals.—*Bull.*—A bull dedicated to an idol and allowed to roam at large is not *res nullius* (thing belonging to no one) but it remains the property of the trustees of the temple, and can become the subject of theft[5]; but not a bull set at large in accordance with a religious usage[6].

Peacock.—A peacock tamed but not kept in confinement is the subject of theft[7]. So is the case with pigeons kept in dove-cote and partridges.

Fish.—Fish in an ordinary open irrigation tank[8]; or in a tank not enclosed on all sides but dependent on the overflow of a neighbouring channel[9]; or in a public river or creek, the right of fishing in which has been let out[10], are *feræ naturæ* and not subject of theft. If the water in an irrigation tank has gone so low as not to permit the fish leaving the tank then they may be subject of theft[11]. Similarly fish in an enclosed tank are restrained of their natural liberty and liable to be taken at any time according to the pleasure of the owner, and are, therefore, subject of theft[12].

3. 'Out of the possession of any person.'—It is sufficient if property is removed against his wish, from the custody of a person who has an apparent title, or even colour of right, to such property[13].

The Author of the Code in their note remark: "We believe it to be impossible to mark with precision, by any words, the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardlly be doubted, for example, that a gentleman's watch lying on the table in his room is in his possession, though it is

1 *Ramadhin*, (1902) 25 All. 129.
2 *David White*, (1853) 6 Cox 213.
3 *Ferens* v. *O'Brien*, (1883) 11 Q. B. D. 21.
4 *Sheikh Arif*, (1908) 35 Cal. 437.
5 *Nalla*, (1887) 11 Mad. 145.
6 *Romesh Chunder Sannyal* v. *Hiru Mondal*, (1890) 17 Cal. 852; *Bandhu*, (1885) 8 All. 51; *Nihal*, (1887) 9 All. 348.
7 *Nanhe Khan*, (1897) 17 A.W.N. 41.
8 *Subba Reddi* v. *Munshoor Ali Saheb*, (1900) 24 Mad. 81.
9 *Maya Ram Surma* v. *Nichala Katani*, (1888) 15 Cal. 402.
10 *Bhagiram Dome* v. *Abar Dome*, (1888) 15 Cal. 388.
11 *Subbian Servai*, (1911) 36 Mad. 472.
12 *Shaik Adam*, (1886) 10 Bom. 193.
13 *Gangaram Santram*, (1884) 9 Bom. 135.

not in his hand, and though he may not know whether it is on his writing table or on his dressing-table; as little will it be doubted that a watch which a gentleman lost a year ago on a journey, and which he has never heard of since, is not in his possession. It will not be doubted that when a person gives a dinner his silver forks, while in the hands of his guests, are still in his possession; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawn-broker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce, with confidence, whether that property is or that it is not in a person's possession[1]."

A moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need[2].

The property must be in the possession of the prosecutor[3]. Thus, there can be no theft of wild animals, birds, or fish while at large, but there can be a theft of tamed animals. Similarly, where property dishonestly taken belonged to a person who was dead, and therefore in nobody's possession, or where it is lost property without any apparent possessor, it is not the subject of theft, but of criminal misappropriation [*vide* ill. *(g)*].

There may be theft without an intention to deprive the owner of the property permanently. In this respect the Penal Code differs from the English law. Where, therefore, a person snatched away some books from a boy as he came out of school and told him that they would be returned when he came to his house, it was held that he had committed theft[4].

'Any person'.—The person from whose possesion the property is taken may or may not be the owner of it and may have his possession either rightful or wrongful. Mere physical control of the person over the thing is quite enough [*vide* ills. *(j)* and *(k)*]

Attachment.—Theft can be committed by the owner of property under attachment removing it. Where a judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force, it was held that he could not be convicted of theft but of offences under ss. 424 and 403[5].

Joint possession.-Where there are several joint owners in joint possession, and any one of them dishonestly takes exclusive possession, he would be guilty of theft[6]. Similarly, if a co-parcener dishonestly takes the separate property of another co-parcener, it will amount to theft[7].

Cases.—Taking out of the possession of another person.—The complainant washed a carpet at the village tank and hung it up there to dry. The accused dishonestly took the same away. It was held that the carpet had never left the complainant's possession, and this offence had been com-

1 Note N.
2 Stephen's Digest of Criminal Law, Art. 306.
3 *Hossenee* v. *Rajkrishna*, (1873) 20 W.R. 80.
4 *Naushe Ali Khan*, (1911) 34 All. 89.
5 *Obayya*, (1898) 22 Mad. 151.
6 *Ponnurangam*, (1887) 10 Mad. 186.
7 *Sita Ram Rai*, (1880) 3 All. 181.

mitted[1]. Where the complaint had an apparent title as tenant of the land together with long possession, and he had on the strength of this raised the crop which the accused removed, it was held that the accused was guilty of theft because he was not justified in taking the law into his own hand, even if he was entitled to hold the land as he was not in actual possession of them[2].

4. '*Consent*'.—The thing stolen must have been taken without the consent of the person in possession of it. Hence, where a debtor gave certain property to his creditor, and subsequently found out that the debt was time-barred, it was held that the charge of theft could not be sustained against the creditor, inasmuch as there was a full and unqualified consent on the part of the debtor at the time of his giving away the property[3]. Explanation 5 says that consent may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied [*vide* ills. (*m*) and (*n*)]. But the consent given under improper circumstances will be of no avail [*vide* ill. (*o*)].

Cases.—A sought the aid of B with the intention of committing a theft of the property of B's master. B with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. It was held that as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed, but A had been guilty of abetment of abetment of theft[4]. Really speaking, the owner did not consent to the dishonest taking away of the property. He merely assisted the thief in carrying out the latter's dishonest intention. Cf. ills. (*m*), (*n*) and (*o*). The thief had no knowledge of the owner's act and it cannot, therefore, be construed as a consent.

The accused suggested to a servant of the prosecutrix a plan for the commission of a robbery by the accused at the shop of the prosecutrix. The servant, pretending to agree to the accused's suggestion, lent the keys of the shop to the accused, who made duplicate keys, with one of which, on a day arranged with the servant, the accused unlocked a padlock attached to the outer door and entered the shop where he has arrested. The prosecutrix had been informed by the servant of the accused's plan and knew that he intended to enter the shop on the day in question. The accused was convicted on an indictment which charged him with having broken and entered the shop with intent to steal therein. It was held that the conviction was right notwithstanding that the prosecutrix knew that the appellant had been supplied with the means of breaking and entering by her servant[5].

Unauthorised consent.—Possession of wood by a Forest Inspector, who is a servant of Government, is possession of the Government itself and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, was held to constitute theft, as consent was unauthorized and fraudulent[6].

[1] *Mathi*, (1886) Cr. R. No. 70 of 1886, Unrep. Cr. C. 314.

[2] *Pandita* v. *Rahimulla*, (1900) 27 Cal. 501.

[3] *Musammat Piari Dulaiya*, (1904) 1 A. L. J. R. 508.

[4] *Troylukho Nath Chowdhry*, (1878) 4 Cal. 366.

[5] *Chandler*, [1913] 1 K. B. 125.

[6] *Hanmanta*, (1877) 1 Bom. 610.

5. **'Moves that property.'**—The least removal of the thing taken from the place where it was before is a sufficient asportation though it be not quite carried off. It is not necessary that the property should have been removed out of its owner's reach or carried away from the place in which it was found. Upon this principle the guest, who having taken off the sheets from his bed with an intent to steal them carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny. So also was he, who having taken a horse in a close with intent to steal it, was apprehended before he could get it out of the close[1].

The offence of theft is completed when there is a dishonest moving of the property, even though the property is not detached from that to which it is secured.

Explanations 3 and 4 state how 'moving' could be effected in certain cases. Illustrations (*b*) and (*c*) elucidate the meaning of Explanation 4.

Cases.—The accused being in the employ of Government in the Post Office Department, while assisting in the sorting of letters, secreted two letters with the intention of handing them to the delivery peon and sharing with him certain money payable upon them. It was held that he was guilty of the offence of theft and of attempt to commit dishonest misappropriation of property[2]. Where the accused was found to have cut the string which fastened a neck ornament to complainant's neck and to have forced the ends of the ornament slightly apart in order to remove the same from her neck with the result that in the struggle that ensued between her and the accused it fell from her neck and was found on the bed later on, it was held that there had been a sufficient 'moving' of the ornament to constitute theft[3].

Where the accused lifted up a bag from the bottom of a boot of a coach, but was detected before he had got it out, and it did not appear that it was entirely removed from the space it at first occupied in the boot, but he raising it from the bottom had completely removed each part of it from the space that specific part occupied, it was held that this was a complete asportation[4]. Where the servant of a tallow-chandler removed fat belonging to his master from the room in which it was kept, to a room where his master was accustomed to buy fat from persons who had it to sell, and placed it on a pair of scales there, with intent to sell it to his master, and appropriate the proceeds to his own use; this was held to be larceny[5]. Pulling wool from the bodies of live-sheep and lambs was held to be larceny[6].

6. **Explanations 1 and 2.**—The moving by the same act which effects the severance may constitute theft[7]. Carrying away of trees after felling them is theft[8], but mere sale is not[9]. In the case of growing grass, a moving

1 East P. C. 555.
2 *Venkatasami*, (1890) 14 Mad. 229.
3 *Bisakhi*, (1917) P. R. No. 29 of 1917.
4 *James Walsh*, (1824) 1 Mood. 14.
5 *Hall*, (1849) 3 Cox 245.
6 *Robert Martin*, (1777) 1 Leach 171.
7 (1870) 5 M. H. C. App xxxvi.
8 *Bhagu; Vishnu*, (1897) Cr. R. No. 36 of 1897, Unrep. Cr. C. 928.
9 *Balas alias Hussain Sahib*, (1882) 1 Weir 419.

by the same act which effects its severance from the earth may amount to a theft[1].

Where certain land, on which there was a standing crop of paddy, was entrusted to the accused to take care of and watch till the paddy was ripe when they were to give notice to the factory people who would reap it, it was held that by cutting the crops themselves and disposing of the same, the accused were guilty of theft[2].

Husband and wife.—Hindu law.—There is no presumption of law that a husband and wife constitute one person in India for the purpose of criminal law. If the wife removes her husband's property from his house with dishonest intention, she is guilty of theft[3]. A Hindu woman who removes rom the possession of her husband, and without his consent, her *stridhan* (woman's property) cannot be convicted of theft because this species of property belongs to her absolutely[4].

So also, a husband cannot be convicted of robbing his wife the wife being completely under the control of her husband. He can be convicted if he steals his wife's *stridhan*.

Mahomedan law.—It is laid down that a Mahomedan wife, may be convicted of stealing from her husband, because, under this system of law, there does not exist the same union of interest between husband and wife which exists between an English husband and wife[5]. The same reasoning would apply in the case of a Mahomedan husband.

English law.—There is such a unity of interest between husband and wife that ordinarily the wife cannot steal the goods of her husband, nor can an indifferent person steal the goods of the husband by the delivery of the wife; and if the wife deliver the goods of the husband to an indifferent person for that person to convert them to his own use this is no larceny; but if the person to whom the goods are delivered by the wife be an adulterer it is otherwise, and he can be properly convicted of theft even though they be delivered to him by the wife. If no adultery has actually been committed by the parties, but the goods of the husband are removed from his house by the wife and the intended adulterer with an intent that the wife should elope with him and live in adultery with him, this taking of the goods is, in point of law, a larceny[6]. But as husband and wife are one person in law, the wife cannot steal her husband's goods whether she had committed adultery or not[7]. But a person who receives money stolen by a wife from her husband will be punishable for misdemeanour under the Married Women's Property Act[8].

Necessitas inducit privilegium quo ad jura privata.—Where a man in extreme want of food or clothing steals either in order to relieve his present necessities the law allows no such excuse to be considered.

1 *Samsuddin*, (1900) 2 Bom. L. R. 752.
2 *Durga Tewari*, (1909) 36 Cal. 758.
3 *Butchi*, (1893) 17 Mad. 401
4 *Natha Kalyan*, (1871) 8 B.H.C. (Cr. C.) 11.
5 *Khatabai*, (1869) 6 B. H. C. (Cr. C.) 9.
6 *Tollett*, (1841) C. & M. 112.
7 *Kenny*, (1877) 2 Q. B. D. 307.
8 *Payne*, [1906] 1 K. B. 97.

Single or several theft.—Removal by one single act of several articles constitutes one offence of theft only although the articles belong to different persons.[1]

Restoration of stolen property.—The property stolen may be returned to the person from whom it was stolen under s. 517, Criminal Procedure Code, and an innocent purchaser may be compensated for the price paid under s. 519, if any money is found in the possession of the thief. But the property restored should be in existence at the time of theft. R's cow having been stolen the thief after a lapse of a year and a half was convicted. Six months after the theft V innocently purchased the cow, which while in his possession had a calf. The Magistrate ordered that the cow and the calf should be delivered up by V to R. It was held that as the calf was not even in embroyo at the date of the theft, the order to deliver up the calf was illegal[2].

380. Whoever commits theft in any building[1], tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft in dwelling house, etc.

COMMENT.

The object of the section is to give greater security to property deposited in a house, tent or vessel. Theft from a person in a dwelling-house will be simple theft under s. 379[3].

1. 'Theft in any building.'—Building means a permanent edifice of some kind. Theft should, under the section, have been committed in any such building. Theft from a verandah[4]; or the top of a house[5]; or a brake-van[6] is not a theft in a building. But where the accused stole some luggage and cash from a railway carriage, when it was at a railway station, it was held that though the railway carriage was not building, the railway station was, and the accused was therefore rightly convicted under this section[7]. An entrance hall surrounded by a wall in which there were two door-ways but no doors, which was used for custody of property, was held to be a building[8].

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with impri-

Theft by clerk or servant of property in possession of master.

1 *Krishna Shahaji*, (1897) Cr. R. No. 33 of 1897, Unrep. Cr. C. 927.
2 *Vernede*, (1886) 10 Mad. 25.
3 *Tandi Ram*, (1876) P.R. No. 14 of 1876.
4 (1870) 1 Weir 435; contra *Jabar*, (1880) P.R. No. 1 of 1881.
5 (1880) 1 Weir 435.
6 (1880) 1 Weir 446.
7 *Sheik Saheb*, (1886) Cr. R. No. 36 of 1886, Unrep. Cr. C. 293.
8 *Dad*, (1878) P.R. No. 10 of 1879.

sonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section provides for a severe punishment when a clerk or servant has committed theft because he has greater opportunities of committing this offence owing to the confidence reposed in him. When the possession is with the master this section applies; when it is with the servant, s. 408 applies. Where some Policemen stole a sum of money shut up in a box, and placed it in the Police Treasury building, over which they were mounting guard as sentinels, they were held to have committed an offence under this section and not under s. 409[1].

Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATIONS.

(a) A commits theft of property in Z's possession: and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

COMMENT.

The possession by a thief at the time of his committing theft of a knife or other weapon, which, if used on a human being, might cause death or hurt, would not of itself justify a conviction under this section. There must be something to show, or from which it may properly be inferred that the offender made preparation for causing one or more of the results mentioned in the section.

If hurt is actually caused when a theft is committed, the offence is punishable as robbery, and not under this section[2]. In robbery there is always injury. In offences under this section the thief is full of preparation to cause hurt but he may not cause it.

[1] *Juggurnath Singh*, (1865) 2 W. R. 55.

[2] *Hushrut Sheikh*, (1866) 6 W. R. 85.

Of Extortion.

383. Whoever intentionally puts any person in fear of any injury[1] to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person[2] any property or valuable security or any thing signed or sealed which may be converted into a valuable security, commits "extortion."

Extortion.

ILLUSTRATIONS.

(a) A threatens to publish a defamatory libel concerning Z, unless Z, gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for extortion.

COMMENT.

This offence takes a middle place between theft and robbery.

Ingredients.—The ingredients of extortion are—

(1) intentionally putting a person in fear of injury to himself or another;

(2) dishonestly inducing the person put in fear to deliver to any person any property or valuable security.

Theft and extortion.—Extortion is thus distinguished from theft—

(1) Extortion is committed by the wrongful obtaining of consent. In theft the offender takes without the owner's consent.

(2) The property obtained by extortion is not limited as in theft to moveable property only. Immoveable property may be the subject of extortion.

(3) In extortion the property is obtained by intentionally putting a person in fear of injury to that person or to any other, and thereby dishonestly inducing him to part with his property. In theft the element of force does not arise.

1. 'Puts any person in fear of any injury.'—The 'fear' must be of such a nature and extent as to unsettle the mind of the person on whom it operates, and takes away from his acts that element of free voluntary action which alone constitutes consent. Where the threats are not necessarily of a character to excite such alarm, it becomes a question for the jury whether they were made under such circumstances of intimidation as to have that effect[1]. Thus threatening to expose a clergyman, who had criminal intercourse with a woman in a house of ill-fame, in his own church and village, to his own bishop, and to the archbishop, and also to publish his shame in the newspapers, was held to be such a threat as men of ordinary firmness could not be expected to resist[2]. The making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, was held to be extortion[3].

But a refusal to allow people to carry away fire-wood collected in a Government forest without payment of proper fees[4]; a payment taken from the owners of trespassing cattle under the influence of a threat that the cattle would be impounded if the payment were refused[5]: and obtaining a bond under the threat of non-rendering of service as a vakil[6] were held not to constitute extortion.

Threat of criminal accusation.—The terror of criminal charge, whether true or false, amounts to a fear of injury[7]. The guilt or innocence of the party threatened is immaterial. Even the threat need not be a threat to accuse before a judicial tribunal, a threat to charge before any third person is enough[8].

2. 'Deliver to any person any property.'—Delivery by the person put in fear is essential in order to constitute the offence of extortion. Where a person through fear offers no resistance to the carrying off of his property but does not deliver any of the property to those who carry it off, the offence committed is robbery and not extortion[9].

'To any person.'—It is not necessary that the threat should be used, and the property received, by one and the same individual. It may be a matter of arrangement between several persons that the threat should be used by some, and property received by others: and they all would be guilty of extortion[10].

Putting person in fear of injury in order to commit extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury shall be punished with imprisonment of

[1] *George Walton*, (1863) 9 Cox 268.
[2] *Nathalie Miard*, (1844) 1 Cox 22.
[3] *Meer Abbas Ali* v. *Omed Ali*, (1872) 18 W.R. 17.
[4] *Abdul Kadar*, (1866) 3 B. H. C. (Cr. C.) 45.
[5] (1880) 1 Weir 438, 440.
[6] (1870) 5 M. H. C. App. xiv.
[7] *Mobarruk*, (1867) 7 W.R. 28.
[8] *Robinson*, (1837) 2 M. & R. 14.
[9] *Dulceloodeen Sheik*, (1866) 5 W R. 19.
[10] *Shankar Bhagvat*, (1866) 2 B H. C. 394.

either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

By this section a distinction between the inchoate and the consummated offence is recognised. The attempt to commit extortion has proceeded so far towards completion that a person has been put in fear of injury, or that there has been an attempt to excite such fears; but the offence is incomplete because there has been no delivery of property, etc.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Extortion by putting a person in fear of death or grievous hurt.

COMMENT.

If the fear caused is that of death or of grievous hurt it naturally causes great alarm. The section therefore provides for severe penalty in such cases.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

COMMENT.

The relation between this section and s. 386 is the same as that between s. 385 and s. 384.

388. Whoever, commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

Extortion by threat of accusation of an offence punishable with death, or transportation, etc.

COMMENT.

It is immaterial whether the person against whom the accusation is threatened be innocent or guilty if the prisoner intended to extort money. The aggravating circumstance under this section is the threat of an accusation of an offence punishable with death, transportation for life or with imprisonment for ten years. If the accusation is of unnatural offence then the penalty provided is severer.

Putting person in fear of accusation of offence in order to commit extortion.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed or attempted to commit an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

COMMENT.

This section bears the same relation to s. 388 as s. 385 bears to s. 384.

Of Robbery and Dacoity.

Robbery.

390. In all robbery there is either theft or extortion..

When theft is robbery.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away[1] or attempting to carry away property obtained by the theft, the offender, for that end[2], voluntarily causes[3] or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

ILLUSTRATIONS.

(*a*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b*) A meets Z, on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c*) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

COMMENT.

Robbery is a special and aggravated form of either theft or extortion The chief distinguishing element in robbery is the presence of imminent fear of violence. The second para distinguishes robbery from theft, the third distinguishes it from extortion.

Object.—The Authors of the Code in their Note observe: "There can be no case of robbery which does not fall within the definition either of theft, or of extortion: but in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or an extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right arm bracelet may have been obtained by theft, and left-arm bracelet by extortion: that the rupees in Z's girdle may have been obtained by theft and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed, something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For though,

in general, the consent of a sufferer is a circumstance which very materially modifies the character of the offence, and which ought, therefore, to be made known to the Courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial[1]."

The Explanation and the illustrations (*c*) and (*d*) mark the distinction between simple extortion and extortion which is robbery. Illustration (*a*) indicates when theft is robbery.

1. 'Carrying away.'—Even if death, hurt or wrongful restraint, or fear of any of these, is caused after committing the theft, but in order to carry away the property obtained by theft, this offence would be committed. According to the English law the force which converts theft into robbery must be used before, or at the time of taking, and must be of such a nature as to shew that it was intended to overpower the party robbed, and prevent his resisting and not merely to get possession of the property stolen[2].

2. 'For that end.'—Death, hurt, or wrongful restraint must be caused in committing theft, or in carrying away property obtained by theft. Where a person caused hurt only to avoid capture when surprised while stealing[3], it was held that theft and not robbery, had been committed The use of violence will not convert the offence of theft into robbery unless the violence be committed for one of the ends specified in the section. Where the accused abandoned the property obtained by theft and threw stones at his pursuer to deter him from continuing the pursuit, it was held that the accused was guilty of theft and not of robbery[4].

3. 'Voluntarily causes.'—These words denote that an accidental infliction of injury by a thief will not convert his offence into robbery. Thus where a person while cutting a string, by which a basket was tied, with intent to steal it, accidentally cut the wrist of the owner who at the moment tried to seize and keep the basket and ran away with it, it was held that the offence committed was theft and not robbery[5]. But where in committing theft, there is indubitably an intention, seconded by an attempt, to cause hurt, the offence is robbery[6].

CASES.

Where A and B were stealing mangoes from a tree, C surprized them on which A knocked him down senseless with a stick[7]; and where a person in snatching a noso-ring wounded the woman in the nostril and caused her blood to flow[8], this offence was held to have been committed. Where a Police Officer obtained Rs. 7 from two prisoners on a promise of releasing them and threatened them that unless they gave him Rs. 200 he would confine them in the lock-up and keep them there for months while a charge of bribery against them, in respect of Rs. 7, was being investigated, and on his

[1] Note N.
[2] *Thomas Gnosil*, (1824) 1 C. & P. 304.
[3] *Kalio Kerio*, (1872) Cr. R. 27th June 1872, Unrep. Cr. C. 65.
[4] (1865) 1 Weir 442; *Kalio Kerio*, *supra*.
[5] *Edwards*, (1843) 1 Cox 32.
[6] *Teekai Bheer*, (1866) 5 W.R. 95.
[7] *Hushrut Sheikh*, (1866) 6 W. R. 85.
[8] *Teekai Bheer*, (1866) 5 W.R. 95.

threat he was allowed to take certain ornaments, it was held that the offence committed was that of robbery[1].

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity."

Dacoity.

COMMENT.

Dacoity is robbery committed by five or more persons, otherwise there is no difference between dacoity and robbery. The gravity of the offence consists in the terror it causes by the presence of a number of offenders. Abettors who are present and aiding when the crime is committed are counted in the number.

Dacoity includes theft, and if no property is carried off, there is no dacoity but an offence under s. 402.

CASES.

Dacoity must be either theft or extortion.—Where several Hindus acting in concert forcibly removed an ox and two cows from the possession of a Mahomedan; not for the purpose of causing wrongful gain to themselves or wrongful loss to the owner of the cattle but for the purpose of preventing the killing of the cows, it was held that they could not be convicted of dacoity but only of riot[2]. In a subsequent case the principle of this decision has been held to be limited to the particular facts of the case. Where a large body of Hindus acting in concert, and apparently under the influence of religious feeling, attacked certain Mahomedans, who were driving cattle along a public road, and forcibly deprived them of the possession of such cattle under circumstances which did not imply any intention of returning the cattle to the Mahomedans, it was held that they were guilty of dacoity[3].

Fear of instant death, or of hurt, or of wrongful restraint.—Imminent fear of death, hurt, etc., will be sufficient to bring the section into operation. Where several persons attacked a house and took away property, but the inmates obtaining information beforehand fled before the attack, it was held that the fact of the inmates running away was sufficient proof of the fear of hurt or wrongful restraint and the accused were guilty of dacoity[4].

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall

Punishment for robbery.

1 *Basant Rai*, (1896) P. R. No. 12 of 1896.
2 *Raghunath Rai*, (1892) 15 All. 22.
3 *Ram Baran*, (1893) 15 All. 299.
4 *Kissoree Pater*, (1867) 7 W.R. 35

also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Attempt to commit robbery.*

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section imposes severe punishment when hurt is caused in committing robbery. Section 397 similarly provides for the minimum sentence of imprisonment which must be inflicted when grievous hurt is caused.

Punishment for dacoity.

395. Whoever commits dacoity shall be punished with transportation for life, or which rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

In enacting this section the object of the legislature seems to be that the extreme penalty of death may be inflicted on a person convicted of taking part in a dacoity in the course of which a murder is committed, even though there is nothing to show that he himself committed the murder or that he abetted it. The section declares the liability of other persons as co-extensive with the one who has actually committed murder.

Ingredients.—The first essence of an offence under this section is that the dacoity is the joint act of the persons concerned, and the second essence

is that the murder is committed in the course of the commission of the dacoity in question[1].

The section says that if 'any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity' then every one of those persons shall be liable to the penalty prescribed in the section. It is not necessary that murder should be committed in the presence of all. When in the commission of a dacoity a murder is committed it matters not whether the particular dacoit was inside the house where the dacoity is committed, or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity[2]. Where after the commission of a dacoity, in which, however, the dacoits, being interrupted by the villagers, did not get any plunder, the dacoits were attempting to escape, and one or more of them, in order to facilitate the escape, attacked and killed one of the pursuing party, it was held that this section did not apply, but only the person or persons actually taking part in the killing were liable therefor[3].

Robbery or dacoity with attempt to cause death or grievous hurt.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

COMMENT.

This section merely regulates the punishment already provided for dacoity by fixing a minimum term of imprisonment when its commission has been attended with certain aggravating circumstances, *viz.*, (1) the use of a deadly weapon, or (2) the causing of grievous hurt, or (3) attempting to cause death or grievous hurt.

It is necessary to prove that at the time of committing robbery the accused was armed with a deadly weapon and not merely that one of the robbers who was with him at the time carried one[4]. The liability to enhanced punishment is limited to the offender who actually causes grievous hurt[5].

Violence should have been used in committing robbery or dacoity.—The accused fractured one of the arms of a woman by striking one or two blows with a stick, and thereby causing her to fall to the ground, his object being to steal the pony on which she was riding. He then attempted to mount

1 *Mathura Thakur*, (1901) 6 C.W. N. 72.

2 *Teja*, (1895) 17 All. 86; *Umrao Singh*, (1894) 16 All. 437, dissented from.

3 *Chandar*, (1906) 26 A.W N. 47.

4 *Bhavjya*, (1895) Cr. R. No. 54 of 1895, Unrep. Cr. C. 797.

5 *Deoji Keru*, (1872) Unrep. Cr. C. 65, Cr. R. of August 1872; *Komali Viswasam*, (1886) 1 Weir 450; *Senta*, (1899) 19 A. W. N. 186; *Nageshwar*, (1906) 28 All. 404.

and ride off the pony but was prevented from doing so by the girth of the pony saddle breaking. It was held that this section was applicable[1].

Attempt to commit robbery or dacoity when armed with deadly weapon.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

COMMENT.

This section applies to such of the offenders as are armed with deadly weapons though they do not use them in the attempt to rob or commit dacoity.

Making preparation to commit dacoity.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section makes preparation to commit dacoity punishable.

Under the Code preparation to commit an offence is punishable in three cases :

(1) Preparation to wage war against the King-Emperor (s. 122).

(2) Preparation to commit depredation on territories of Power at peace with the King (s. 126).

(3) Preparation to commit dacoity.

In a popular sense assembling to commit dacoity may be an act of preparation for it, but a mere assembly, without further preparation, is not 'preparation' within the meaning of this section. Section 402 applies to mere assembling without proof of other preparation. A person may be not guilty of dacoity, yet guilty of preparation, and not guilty of preparation yet guilty of assembling[2].

Punishment for belonging to gang of dacoits.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

[1] *Harnaman*, (1900) P. R. No. 6 of 1901.

[2] *Ramesh Chandra Banerjee*, (1913) 41 Cal. 350.

COMMENT.

This section provides for the punishment of those who belong to a gang of persons who make it their business to commit dacoity. Its object is to break up gangs of dacoits by punishing persons associated for the purpose of committing dacoity. The mere fact that women lived as wives or mistresses with men who were dacoits was held not sufficient for a Court to hold that they belonged to a gang of persons associated for the purpose of habitually committing dacoity within the meaning of this section, unless it be proved that the women themselves were associated with the husbands or protectors for the purpose of themselves habitually committing dacoities[1].

Punishment for belonging to gang of thieves.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs, or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

The principle enunciated in the last section is extended by this section to a gang of thieves or robbers. It is not necessary to prove that each individual member of the gang has habitually committed theft or has committed any particular theft in company with the other members[2].

Assembling for purpose of committing dacoity.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

An unlawful assembly of persons meeting for a common purpose to commit dacoity is subject to the severe punishment provided in this section even though no step is taken in prosecution of the common object. Several persons were found at eleven o'clock at night on a road just outside the city of Agra, all carrying arms (guns and swords) concealed under their clothes. None of them had a license to carry arms, and none of them could give any reasonable explanation of his presence at the spot under the particular circumstances. It was held that they were guilty under this section[3].

[1] *Yelli kom Yella*, (1896) Cr.R. No. 26 of 1896, Unrep. Cr. C. 863.

[2] *Beja*, (1914) P.R. No. 13 of 1914.

[3] *Bholu*, (1900) 23 All. 124.

Of Criminal Misappropriation of Property.

403. Whoever dishonestly misappropriates or converts to his own use[1] any moveable property[2], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest misappropriation of property.

ILLUSTRATIONS.

(a) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B being joint-owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

ILLUSTRATION.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z, A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

ILLUSTRATIONS.

(*a*) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Hear A has not committed the offence defined in this section.

(*b*) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

COMMENT.

Criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent[1]. The offence consists in the dishonest misappropriation or conversion either permanently or for a time of property which is already without wrong in the possession of the offender[2]. See illustrations (*a*), (*b*) and (*c*) which shew that the original innocent taking amounts to criminal misappropriation by subsequent acts.

This section lays down a principle quite at variance with the English law according to which the intention of the accused at the time of obtaining the possession of property is only taken into account. If the intention was

[1] *Bhagiram Dome* v. *Abar Dome*, (1888) 15 Cal. 388, 400.

[2] *Ramakrishna*, (1888) 12 Mad. 49, 50.

not dishonest when the possession was obtained, subsequent change of intention does not convert the possession into an illegal one. According to the English law innocent taking followed by conversion, owing to subsequent change of intention, is a civil wrong but not an offence. Explanation 2 emphasizes the difference between the English law and the Code.

Ingredients.—The section requires—

1. Dishonest misappropriation or conversion of property for a person's own use.

2. Such property must be moveable.

1. 'Dishonestly misappropriates or converts to his own use.'—There must be actual conversion of the thing misappropriated to the accused's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of this offence[1]. Where the accused found a purse on the pavement of a temple in a crowded gathering and put it in his pocket but was immediately after arrested, it was held that he was not guilty of criminal misappropriation for it could not be assumed that by the mere act of picking up the purse or putting it in his pocket he intended to appropriate its contents to his own use[2].

2. 'Any moveable property.'—The misappropriation must be of moveable property.

A bull set at large in accordance with Hindu religious usage is not 'property' of any one, and not the subject of ownership by any person, as the original owner has surrendered all his rights as its proprietor, and has given the beast its freedom to go withe ever it chose[3]. Such a bull cannot be the subject of criminal misappropriation. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors[4].

Explanation 2.—The word "misappropriation" is in the illustrations and in the explanations to this section replaced by the expression "appropriates to his own use," which seems equivalent to "setting apart for his own use," to the exclusion of others. It does not, of course, follow from this that setting apart by one person for the use of some person other than himself and the true owner is not a misappropriation[5]. A Hindu girl having picked up a gold necklet and made it over to a sweeper girl, the accused, the brother of the finder, represented to the latter that the necklet belonged to a jat of his acquaintance, and thus got possession of it from her. On enquiry by a Police Constable a few hours later, he repeated the representations, but afterwards gave up the necklet. These representations were found to be untrue to the knowledge of the accused. It was held that the accused had committed this offence[6].

1 *Abdool*, (1868) 10 W. R. 23.
2 *Phuman*, (1907) P. R. No. 11 of 1908.
3 *Bandhu*, (1885) 8 All. 51; *Nihal*, (1887) 9 All. 348.
4 *Romesh Chunder Sannyal* v. *Hiru Mondal*, (1890) 17 Cal. 852.
5 *Ram Dyal*, (1886) P. R. No. 24 of 1886.
6 *Ibid.*

Theft and Criminal Misappropriation.—(1) In theft the offender dishonestly takes property which is in the possession of a person out of that person's possession; and the offence is complete as soon as the offender moves the property. Criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of possession or from the knowledge of some new fact, with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent.

(2) The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. But this intention, which in theft is sufficiently manifested by a moving of the property, must in criminal misappropriation be carried into action by an actual misappropriation or conversion.

Temple property.—The property of an idol or a temple must be used for the purposes of that idol or temple; any other use would be a malversation of that property, and, if dishonest, would amount to criminal misappropriation[1].

Retention of money paid by mistake.—Where money is paid to a person by mistake, and such person, either at the time of receipt or at any time subsequently, discovers the mistake, and determines to appropriate the money, that person is guilty of criminal misappropriation[2]. In England, the law is doubtful on this point[3].

Joint property.—Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act if he takes possession of it, and disposes of it[4]. No co-parcener in a joint Hindu family having before division a right in or to any specified share in any particular items of the family property, a prosecution for dishonest misappropriation cannot lie against the managing member of the family until accounts have been taken and shares allotted[5].

Explanation 1.—This explanation refers only to cases in which there is a "dishonest misappropriation" and explains that the section includes temporary as well as permanent misappropriation of that description.

Explanation 2.—There can be no criminal misappropriation of things which have actually been abandoned[6]. The property must be owned by some one to render a person guilty of misappropriating it.

Where property is cast away or abandoned, any one finding and taking it acquired a right to it, which will be good even as against the former owner, if the latter should be minded to resume it, but when a thing is accidentally lost, the property is not divested, but remains in the owner who loses it.[7] In England the law seems to be that if a man finds goods that have been

1 *Gadgayya* v. *Guru Siddeshvar*, (1897) Unrep. Cr. C 919.

2 *Shamsoondur*, (1870) 2 N. W. P. 475.

3 *Middleton*, (1873) L. R. 2 C. C. R. 38; *Ashwell*, (1885) 16 Q. B. D. 190.

4 *Parbutty Churn Chuckerbutty*, 1870) 14 W. R. 13.

5 (1880) 1 Weir 453; *Pania*, (1881) 1 A. W. N. 89.

6 *Bandhu*, (1885) 8 All. 51; *Nihal*, (1887) 9 All. 348; *Romesh Chunder Sannyal* v. *Hiru Mondal*, (1890) 17 Cal. 852; *Sita*, (1893) 18 Bom. 212.

7 *Glyde*, (1898) L. R. 1 C. C. R. 139, 140.

actually lost, or are reasonably supposed by him to have been lost, and appropriates them, with intent to take the entire dominion over them, really believing when he takes them that the owner cannot be found, it is not larceny. But if he takes them with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny[1].

CASES.

Claim of right.—A servant, who retained in his hands money which he was authorised to collect, and which he did collect, from the debtor of his master, because money was due to him as wages, was held guilty of criminal misappropriation[2].

Servant misappropriating money received on behalf of his master.—Where the accused, a Government servant, whose duty it was to receive certain money and to pay it into treasury on receipt, admitted that he had retained two sums of money in his possession for several months, but on fearing detection he paid them into the treasury, making a false entry at the time in his books with a view to avert suspicion, it was held that he had committed this offence[3].

Secreting letters.—The accused, a servant in the Postal Department, while assisting in the sorting of letters, secreted two letters, with the intention of handing them over to the delivery peon and sharing with him certain moneys payable upon them, it was held that the accused was guilty of attempt to commit dishonest misappropriation of property and of theft[4].

Harvesting crops under attachment.—A judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force it was held that he had committed this offence[5].

Exchanging of railway tickets.—A and B were about to travel by the same train from Benares city. A had a ticket for Ajudhia. B had two tickets for Benares Cantonment. A voluntarily handed over her ticket to B in order that he might tell her if it was right. B, under the pretence of returning A's ticket, substituted therefor one of his own, and kept A's ticket. It was held that B had committed criminal misappropriation rather than cheating[6].

Explanation 2.—Property found on an open plain.—Where the accused found a gold *mohur* (sovereign) on an open plain, and sold it the next day to a shroff for its full value and appropriated the sale proceeds, it was held that, in the absence of any information as to the circumstances under which the coin was lost, and as it was not improbable that the property.

1 *Thurborn*, (1849) 18 L. J. (M. C.) 140.
2 *Bissessur Roy*, (1869) 11 W. R. 51.
3 *Ramakrishna*, (1888) 12 Mad. 49.
4 *Venkatasami*, (1890) 14 Mad. 229.
5 *Obayya*, (1898) 22 Mad. 151.
6 *Raza Husain*, (1905) 25 A. W. N. 9.

in the coin had been abandoned by the original owner, the accused could not be convicted of criminal misappropriation[1].

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

ILLUSTRATION.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

COMMENT.

This section relates to a description of property peculiarly needing protection. The offence consists in the pillaging of moveable property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it[2].

The word 'property' in this section does not refer to immoveable property, but only to moveable property. Hence, where a person was convicted of misappropriating the house of a person deceased, the conviction was annulled[3].

Of Criminal Breach of Trust.

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property[1], or with any dominion over property, dishonestly misapropriates[2] or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust[3] is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust,

[1] *Sita*, (1893) 18 Bom. 212.
[2] M. & M. 364.
[3] *Girdhar Dharamdas*, (1869) 6 B. H. C. (Cr. C.) 33.

or wilfully suffers any other person so to do, commits "criminal breach of trust."

ILLUSTRATIONS.

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a Revenue-officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

To constitute this offence there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The offence of criminal breach of trust closely resembles the offence of embezzlement under the English law. Offences committed by trustees with regard to trust property fall within the purview of this section.

Ingredients.—The section requires—

1. Entrusting any person with property or with any dominion over property.

2. The person entrusted (*a*) dishonestly misappropriating or converting to his own use that property ; or

(*b*) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation

(i) of any direction of law prescribing the mode in which such trust is to be discharged, or

(ii) of any legal contract made touching the discharge of such trust.

The section does not require that the trust should be in furtherance of any lawful object. Offences committed by trustees with regard to trust property will fall within the purview of this section. Negligence or other misconduct causing the loss of the trust property may make the person entrusted civilly responsible, but will not make him guilty of criminal breach of trust.

Criminal Misappropriation and Criminal Breach of Trust.—In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same, or wilfully suffers any other person so to do instead of discharging the trust attached to it.

1. 'Property' referred to in this section is moveable property.—Criminal breach of trust cannot be committed in respect of immoveable property[1]. The accused was a Jamadar of an indigo factory and in such capacity was entrusted with dominion over certain plots of land. His duty was to see that the plots were cultivated with indigo but he knowingly allowed them to be cultivated with other crops. It was held that the accused was not guilty of criminal breach of trust[2]. A cancelled cheque is property[3].

This section does not cover misappropriation by a person of the sale proceeds of the property entrusted to him.

Dominion over property.—The property regarding which the offence is alleged to have been committed must have been 'entrusted' to the accused or he must have 'dominion' over it. Where it is the duty of a Municipal Water Works Inspector to supervise and check the distribution of water from the Municipal Water Works, he has dominion over the water belonging to his employers. If he deliberately misappropriates such water for his own use or for the use of his tenants for which he pays no tax and gives no information to his employers he is guilty of criminal breach of trust[5].

2. 'Dishonestly misappropriates.'—Dishonest intention is the gist of the offence. If a person admits the appropriation alleging a right in himself, no matter how unfounded, or sets up an excuse, no matter how frivolous, this

[1] *Jugdown Sinha*, (1895) 23 Cal. 372 ; *Bhagu and Vishnu*, (1897) Cr.R. No. 36 of 1897. Unrep. Cr. C. 928.

[2] *Jugdown Sinha*, sup.

[3] *Maula Bakhsh*, (1904) 27 All. 28.

[4] *Balthasar*, (1914) 41 Cal. 844.

[5] *Bimala Charan Roy*, (1913) 35 All. 361.

offence is not committed. Bare refusal by the accused to allow the removal of a box left in his house by the complainant, unless some debt due to him by the complainant was paid, is held not to amount to criminal breach of trust[1].

Wilful omission to account.—If a person receives money which he is bound to account for and does not do so, he commits this offence although no precise time can be fixed at which it was his duty to pay over the money[2]. If a servant, immediately on receiving a sum for his master, enters a smaller sum in his master's books, and ultimately accounts to his master for the smaller sum, he may be considered as embezzling the difference at the time he makes the entry. It will make no difference though he received other sums for his master the same day, and in paying those and the smaller sum to his master together he might give his master every piece of money or note he received at the time he made the false entry[3].

The position of a shroff of a battery with reference to the custody of the Government moneys entrusted to him being that of a cashier, his failure to produce the entire amount of the balance of cash entrusted to him amounts to criminal breach of trust[4].

'Dishonestly uses'.—A user of property comes within this definition where such user causes substantial or appreciable loss to the owner of the property or gain to the accused. The use by a printer of certain blocks entrusted to him to print the complainant's catalogue for the purpose of printing a rival firm's catalogue amounts to criminal breach of trust[5]. The Madras High Court has however held that for either wrongful loss or gain the property must be lost to the owner or the owner must be wrongfully kept out of it. The deterioration of an article such as a turban, by use on the part of the person to whom it is pledged, is not such a loss of property to its owner and such a gain to the pledgee as to amount to this offence[6].

3. **'Trust'.**—A trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him, for the benefit of another, or of another and the owner[7]. Hence, where there is no original confidence, there is no trust, and a misappropriation, if punishable at all, will be under s. 403.

Partner.—The words of the section are wide enough to include the case of a partner, if it be proved that he was in fact entrusted with the partnership property, or with a dominion over it, and has dishonestly misappropriated it or converted it to his own use[8].

1 *Adinarayana Iyer*, (1907) 17 M. L. J. R. 413.

2 *Welch*, (1846) 1 Den. 199.

3 *John Hall*, (1821) R. & R. 463.

4 *Hira Lal*, (1907) P. R. No. 10 of 1908

5 *Keshab Chandra Boral* v. *Nityanund Biswas*, (1901) 6 C. W. N. 203.

6 (1866) 3 M. H. C. App. 6.

7 Indian Trusts Act, II of 1882, s. 5.

8 *Okhoy Coomar Shaw*, (1874) 13 B. L. R. 307, F.B., 21 W. R. 59; *Lalloo Ghella*, (1904) 6 Bom. L. R. 553; *Debi Prasad Bhagat* v. *Nagar Mull*, (1908) 35 Cal. 1108.

Wife.—A woman has a joint possession of her husband's property and cannot therefore be indicted for disposing of it in any way[1]. According to English law she can be convicted of larceny as a bailee[2].

Pledge.—A person who pledges what is pledged to him may be guilty of this offence[3].

Disputed claim.—A person cannot be convicted of criminal breach of trust on refusing to give to the complainant money, which is claimed by another person as well as by the complainant, and which that person denies is due to the complainant[4].

CASES.

Breach of trust.—Where the accused were entrusted with some silver for the purpose of making ornaments and they introduced copper into the ornaments[5]; and where a Magistrate made over a pony, which had been condemned by the Municipal authorities as unfit for work, to a person professing to be the Secretary of a Society for the maintenance of incurable animals, and such Secretary agreed to take charge of the pony, but afterwards sold it to a fly driver[6], this offence was held to have been committed.

A servant of a liquor contractor was entrusted with liquor by his master to sell. For selling it, he was to receive a certain quantity himself, and he was to account for the remainder to his master, with whom he made a legal contract that he would not adulterate it with water before selling it. In violation of that contract he mixed water with the liquor, and, having thus increased its amount, sold it at the same rate per gallon as was chargeable for unadulterated liquor, and appropriated the profit thus made to his own use. It was held that, having thus gained by unlawful means money which he was not legally entitled, he acted dishonestly within the meaning of this Code, and should be convicted under s. 406[7]. The accused was entrusted with a pair of ear-rings for the purpose of raising Rs. 7 only upon them for the complainant's use. But he pledged them for a larger sum, gave Rs. 7 to the complainant and applied the additional money to his own use without telling him what he had done. It was held that the accused was guilty of criminal breach of trust[8].

Violation of legal contract.—The accused hired a motor car of the complainant company under the hire purchase system, which provided that until the car was fully paid for by the accused the car was to remain the "absolute property of the company"; and the accused agreed during the hiring "not to assign, underlet or part with the possession" of the car in any way. Whilst the agreement was in force the accused pledged the car to three different persons on three different occasions. It was held that the accused was guilty of criminal breach of trust as the pledging of the

1 (1864) Weir, 3rd Edn., 266.
2 *Jane Robson*, (1861) 31 L. J. (M. C.) 22.
3 (1871) 6 M. H. C. App. xxviii
4 *Raj Kishore Patter* v. *Joy Krishna Sen*, (1900) 28 Cal. 362.
5 *Babaji Bhau*, (1867) 4 B. H. C. (Cr. C.) 16.
6 *Gauri Shankar*, (1894) 14 A. W. N. 197.
7 *Jamsetji*, (1888) Cr. R. No. 53 of 1888, Unrep. Cr. C. 395.
8 *Curumahanty Appalasamy*, (1894) 1 Weir 464.

car by him was a violation of the legal contract made by him in regard to the hire of the car and that violation amounted to dishonesty[1].

Criminal breach of trust by carrier, etc.

407. Whoever, being entrusted with property as a carrier[1], wharfinger[2] or warehouse-keeper,[3] commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

Those who receive property under a contract, express or implied, to carry it or to keep it in safe custody are punishable under this section for a criminal breach of duty with respect to such property.

1. 'Carrier' is a person who undertakes to transport the goods of other persons from one place to another[2]. Any one who undertakes to carry the goods of all persons indifferently for hire is a common carrier[3].

2. 'Wharfinger.'—He that owns or keeps a wharf, which is a broad plain place near some creek or haven to lay goods and wares on that are brought to or from the water[4].

3. 'Warehouse-keeper.'—One who keeps a ware-house, which is a house to deposit or keep wares in. Ware is an article of merchandise, fabric, especially in the plural, goods, commodities, merchandise.

Criminal breach of trust by clerk or servant.

408. Whoever, being a clerk[1] or servant[2] or employed as a clerk or servant[3], and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

Section 381 punishes theft by a clerk or a servant. This section inflicts enhanced punishment on such a person for criminal breach of trust.

To constitute an offence under this section the property must have been entrusted to the accused in his capacity of a clerk or a servant. A clerk or a servant who takes his master's property is punishable for theft.

1. 'Clerk.'—In modern usage it means a writer in an office, public or private, either for keeping accounts or entering minutes.

1 *Silas Moses*, (1915) 17 Bom. L. R. 670.

2 Wharton, 11th Edn., p. 146.

3 *Gisbourn* v. *Hurst*, 1710) 1 Salk. 249.

4 Wharton, 10th Edn., p. 804.

2. **'Servant.'**—Master and servant—a relation whereby a person calls on the assistance of others, where his own skill and labour are not sufficient to carry out his own business or purpose[1].

3. **'Employed as a clerk or servant.'**—If a person acts as a clerk or servant although there is no contract binding on him to work, yet so long as he does the duties he will come under the category of a clerk or a servant[2].

If a servant receive money on his employer's account and embezzles it, he is guilty of a felony, though his employers have no right to it, and are wrong-doers in receiving it[3].

Commission obtained by a servant on payment.—With respect to cases where a servant, employed to pay a bill for his master, obtains a commission or a reduction of price for his own benefit, the law has been thus laid down : "If the account is an *open* one, that is, on account of which the items have never been checked or settled, and if the transaction amounts to taxation of the bill and a reduction of the price by the servant, it is obvious that the servant obtains the reduction for his master ; that the money in his hands always remains the master's property, and that if he appropriates it, he commits criminal breach of trust. But if the master himself has *settled* the account with the tradesman for a specific sum, and he sends the servant with the money, and the servant after making the payment, asks the tradesman for a present, then, if the servant takes the present and keeps it, he is not guilty of stealing, because he has no intention to steal ; the money is given to him by a person whom he believes to have a right to give it. It may be that, according to the strict equitable doctrines of the Court of Chancery, the servant is bound to account to this mastsr for the money. But, however this may be, his act is a very different matter from a criminal offence, and...he cannot be convicted of criminal breach of trust merely because, by a mere equitable doctrine of the Court of Chancery, it was obligatory upon him to render an account"[4].

Appropriation by a servant of property ordered to be destroyed.—The accused, a servant, was ordered by his employers to take certain bags of papers and forms belonging to them to their yard and there to burn and destroy them. Instead of doing this, the accused carried the papers away to a certain place. It was held that the act of the accused did not amount to this offence[5].

409. Whoever, being in any manner entrusted with property[1], or with any dominion over property in his capacity of a public servant[2] or in the way of his business as a banker[3], merchant,[4] factor,[5] broker,[6] attorney[7] or

Criminal breach of trust by public servant, or by banker, merchant, or agent.

[1] Wharton, 11th Edn., p. 777.
[2] *Foulkes*, (1875) L.R. 2 C. C. R. 150.
[3] *Richard Beacall*, (1824) 1 C. & P. 454.
[4] Per Petheram, C. J., in *Imdad Khan*, (1885) 8 All. 120, 138.
[5] *Preo Nath Chowdhry*, (1902) 29 Cal. 489.

agent,[8] commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section classes together public servants, bankers, merchants, factors, brokers, attorneys and agents. As a rule the duties of such persons are of a highly confidential character, involving great powers of control over the property entrusted to them; and a breach of trust by such persons may often induce serious public and private calamity.

1. **'Property.'**—Moneys paid to a Post Master for money-orders are public moneys; as soon as they are paid they cease to be the property of the remitters, and a misappropriation of such moneys will fall under this section[1].

2. **'In his capacity of a public servant.'**—It is not necessary that the property should be that of Government, but that it should have been entrusted to a public servant in that capacity[2].

3. **'Banker.'**—One who receives money to be drawn out again as the owner has occasion for it, the customer being lender, and the banker borrower, with the superadded obligation of honoring the owner's cheques up to the amount of the money received and still in his hands[3]. The word 'banker' includes a cashier or shroff[4].

4. **'Merchant.'**—A merchant is one who traffics to remote countries; also, any one dealing in the purchase and sale of goods[5].

5. **'Factor'** is a substitute in mercantile affairs; an agent employed to sell goods or merchandise consigned or delivered to him by or for his principal, for compensation commonly called factorage or commission[6].

6. **'Broker'** is an agent employed to make bargains and contracts between other persons in matters of trade, commerce and navigation by explaining the intentions of both parties, and negotiating in such a manner as to put those who employ him in a condition to treat together personally. More commonly he is an agent employed by one party only to make a binding contract with another[7].

A factor is entrusted with the possession as well as the disposal of property; a broker is employed by contract about it without being put in possession[8].

7. **'Attorney'** is one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated[9].

1 *Juala Prasad*, (1884) 7 All. 174, F.B.
2 *Ram Soonder Poddar*, (1878) 2 C.L.R. 515.
3 Wharton, 11th Edn., p. 111.
4 *Hira Lal*, (1907) P.R. No. 19 of 1908.
5 Wharton, 11th Edn., p. 559.
6 Wharton, 11th Edn., p. 343.
7 Wharton, 11th Edn., p. 183.
8 *Stevens* v. *Biller*, (1883) 25 Ch. D. 31, Wharton, 11th Edn., p. 343.
9 Wharton, 11th Edn., p. 88.

8. '**Agent**' is a person employed to do any act for another, to represent another, in dealings with third persons[1]. The trustee of a temple is an agent of the deity, and if he commits criminal breach of trust he is guilty under this section[2].

CASES.

Guilty.—Public servant.—A clerk in a record room made over a document forming part of a record in his custody to a person who was entitled to the document, but who would otherwise have had to present an application on stamped paper in order to secure its return in a legal manner. It was held that the clerk was under the above circumstances rightly convicted under this section[3].

Director.—Where the Directors of a Bank paid the dividends out of the deposits, when there were no profits, thereby causing gain to persons to which they were not entitled, and wrongful loss to depositors, they were held guilty under this section[4]. The mere passing of an incorrect balance-sheet is held not to amount to an offence under this section[5].

Not guilty—Public servant.—A certain consignment of rice lay unclaimed at the docks and was advertised for sale by auction by the Port Commissioners. But the rice was found to be in a rotten condition and was ordered to be destroyed by the Health Department of the Corporation of Calcutta. It was entrusted for the purpose of destruction to the accused, who were Inspectors in that Department; but they sold the same to a third party and retained the proceeds of such sale. It was held that they had committed no offence under the Code, though they might have been guilty of infringing a departmental rule[6].

Of the Receiving of Stolen Property.

Stolen property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust bas been committed, is designated as "stolen property," whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof[1], it then ceases to be stolen property.

1 The Indian Contract Act (IX of 1872), s. 182.

2 *Muthusami Pillai*, (1885) 1 Weir 432.

3 *Ganga Prasad*, (1904) 27 All. 260.

4 *Moss*, (1893) 16 All. 88; *Daulat Rai*, (1915) P. R. No. 28 of 1915.

5 *Giles Seddon* v. *Loane*, (1910) 9 M. L. T. 20.

6 *Wilkinson*, (1898) 2 C. W. N. 216.

411. Whoever dishonestly receives or retains[2] any stolen property[3], knowing or having reason to believe the same to be stolen property[4], shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Dishonestly receiving stolen property.

COMMENT.

Section 410 explains what comes under the words 'stolen property'. Things which have been stolen, extorted, or robbed, or which have been obtained by criminal misappropriation or criminal breach of trust come under the extended signification given to these words. The essence of the offence of receiving stolen property under s. 411 consists in the receipt or retention, with a full knowledge at the time of receipt, that the property was obtained in one of the ways specified in s. 410. It is immaterial whether the receiver knows or not who stole it. The section does not apply to the actual thief. The class of persons against whom it is directed is a class to whom these alternative words apply—"knowing or having reason to believe the same to be stolen property[1]." Section 411 is another section which deals with subsequent abetment.

The receipt or retention must take place within British India, unless the person receiving or retaining out of British India is a British subject.

Where there is a dishonest retention in British India of property stolen elsewhere it is no defence by the accused, being a foreign subject, that the property was stolen by himself, he not being liable to be tried, convicted, or punished by the British Court for the theft[2].

1. 'But if such property subsequently comes into the possession of a person legally entitled to the possession thereof.'—If the owner of the stolen property somehow resumes possession of the stolen property before its receipt by the person accused of receiving it, it ceases to be stolen property, and the accused cannot be convicted of receiving it knowing it to have been stolen[3]. If stolen goods are restored to the possession of the owner, and he returns them to the thief for the purpose of enabling him to sell them to a third person, they are no longer stolen goods, and that third person cannot be convicted of receiving stolen goods, although he received them believing them to be stolen. Where, therefore, the goods were found by the owner in the pockets of the thief, and the owner sent for a policeman who took the goods, but subsequently returned them to the thief, who was sent by the owner to sell them where he had sold others, and the thief then went to the shop of the accused and sold the goods, and gave the money to the owner, it was held that the accused was not guilty of receiving stolen goods, inasmuch as they were delivered to him under the authority of the owner by a person to whom the owner had bailed them for that purpose[4].

1 *Johri*, (1901) 23 All. 266.
2 *Jafar Ali*, (1893) P.R. No. 30 of 1894.
3 *Villensky*, [1892] 2 Q. B. 597.
4 *Thomas Dolan*, (1855) 6 Cox 449.

If a person buys in good faith property which has been stolen he does not acquire any ownership therein[1].

2. **'Dishonestly receives or retains.'**—The offences of receiving and retaining are different.

Dishonest 'retention' is contra-distinguished from dishonest 'reception.' In the former offence the dishonesty supervenes after the act of acquisition of possession, while in the latter dishonesty is contemporaneous with the act of such acquisition. Every person who retains possession of property dishonestly, possesses and continues to possess it dishonestly, so long as he retains it dishonestly, but every person who possesses and continues to possess dishonestly, does not 'retain' dishonestly within the meaning of s. 411. Neither the thief, nor the receiver of stolen property, commits the offence of retaining such property dishonestly merely by continuing to keep possession of it. To constitute dishonest retention, there must have been a change in the mental element of possession,—possession always subsisting *animo et facto*—from an honest to a dishonest condition of the mind, in relation to the thing possessed. A simple illustration is the case of a pawn-broker who receives property in pledge honestly, and subsequently discovering it to be stolen property, notwithstanding mentally resolves to keep it for his own benefit. In the absence of any act amounting to misappropriation or conversion of the property to his own use, the pawn-broker could not be convicted under s. 403 of criminal misappropriation, but he might be held to have committed this offence[2].

Thus a person cannot be convicted of 'receiving' if he had no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was stolen. The offence of dishonest retention of stolen property may be complete without any guilty knowledge at the time of receipt[3].

Manual possession not necessary for receiving.—It is not necessary that the accused should have had manual possession of the goods. Where the consignee presented a railway receipt for certain stolen goods to the station-master, paid the freight and received formal delivery of the package from the latter, it was held that the goods had come to be not merely in the potential possession of the consignee but actually within his power and unrestricted control. Though he had not removed them from the station where they were then lying, nor made any attempt to do so, and that he had received them within the meaning of this section[4].

3. **'Stolen property.'**—Property into or for which the stolen property has been converted or exchanged is not stolen property[5]. Hence money obtained upon forged money-orders[6], or an ingot obtained by melting stolen jewellery[7], is not stolen property.

1 Ill. (*a*) to s. 108, Indian Contract Act.
2 Per Plowden, J., in *Najibulla Khan*, (1884) P.R. No. 18 of 1884.
3 (1869) 4 M.H.C. App. 42.
4 *Shewdhur Sukul*, (1918) 40 Cal. 990.
5 *Subhu Chand*, (1881) P.R. No. 39 of 1881.
6 *Monmohun Roy*, (1875) 24 W.R. 33.
7 *Subhu Chand*, *supra*.

4. **'Knowing or having reason to believe the same to be stolen property.'**—The offence made punishable is not the receiving stolen property from any particular person but the receiving such property knowing it to be stolen. But a person is not guilty of this offence although at the time of receiving the property he erroneously believes it to be stolen[1]; or where the articles are not of an unusual character but are such as easily pass from hand to hand[2].

CASES.

Receiver is guilty though the principal is not.—Where a child had committed theft and was discharged under s. 83, this fact was held to be no bar to the conviction of the person who received the stolen property from the child under this section[3].

'Whether the transfer has been made within or without British India.'—Where a Nepalese subject, having stolen cattle in Nepal, brought them into British territory, it was held that he could not be convicted of theft, but that he might be convicted of an offence under this section[4]. Similarly, where the accused, a subject of a Native State, committed a theft at Rajkot and brought the property to Thana, it was held that he could not be tried for theft, but he might be tried under this section for retaining stolen property[5].

Res nullius cannot be the subject of receiving.—Where a bull was let loose, as a part of a religious ceremony, and was the property of no one, it was held not to be the subject of an offence under this section[6] as the original owner had surrendered all his rights as its proprietor and that it was *nullius proprietas*.

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section was enacted to stamp out the offence of dacoity which was very rampant when the Code came into force. It refers to persons other

[1] *Issup*, (1888) Cr.R. No 41 of 1888, Unrep. Cr. C. 389.

[2] *Ravaji*, (1892) Cr. R. No. 13 of 1892, Unrep. Cr. C. 594.

[3] *Begarayi Krishna Saranu*, (1883) 6 Mad. 373.

[4] *Sunker Gope*, (1880) 6 Cal. 307.

[5] *Abdul Latib valad Abdul Rahiman*, (1885) 10 Bom. 186.

[6] *Bandhu*, (1885) 8 All. 51; *Nihal*, (1887) 9 All. 348.

than the actual dacoits. If provides the same punishment to a receiver of property obtained in dacoity as to the dacoits themselves.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Habitually dealing in stolen property.

COMMENT.

This section punishes severely the common receiver or professional dealer in stolen property. One who casually receives stolen property is punished under the two preceding sections according to the taint attaching to the property.

A person cannot be said to be a habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. It must be shewn that the property was received on different occasions and on different dates[1].

414. Whoever voluntarily assists in concealing or disposing or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Assisting in concealment of stolen property.

COMMENT.

Persons who have neither stolen nor received stolen property but who assist in concealing or disposing of such property are punishable under this section. It punishes those acts of receiving or retaining stolen property which do not come under the purview of ss. 411, 412 and 413.

Ingredients.—This section requires two things—

1. Voluntary assistance in concealing or disposing of or making away with property.

2. Knowledge or reason to believe that such property is stolen property.

Of Cheating.

415. Whoever, by deceiving any person[1], fraudulently or dishonestly induces the person so deceived to deliver any property to any person[2], or to consent that any person shall retain any pro-

Cheating.

[1] *Baburam Kansari*, (1891) 19 Cal. 190.

perty[3], or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived[4], and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

ILLUSTRATIONS.

(*a*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c*) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i*) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

COMMENT.

In all the foregoing offences relating to property, the offender merely got possession of the thing in question, but in the case of cheating he obtains possession plus property in it.

The Authors of the Code in their Note observe: "We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained; that is to say, in all cases where the intention of the person who has by deceit obtained the property was to cause a distribution of property which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it as an offence against the rights of property if its object is only to cause a distribution of property which the law recognizes as rightful.

"We propose to punish as guilty of cheating a man who, by false representations, obtains a loan of money, not meaning to repay it; a man who, by false representations, obtains an advance of money, not meaning to perform the service or to deliver the article for which the advance is given; a man who, by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

"In all these cases there is deception. In all, the deceiver's object is fraudulent. He intends in all these cases to acquire or retain wrongful possession of that to which some other person has a better claim, and which that other person is entitled to recover by law. In all these cases, therefore, the object has been wrongful gain, attended with wrongful loss. In all, therefore, there has, according to our definition, been cheating"[1].

English law.—Whoever shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of misdemeanour. The definition of cheating as given in s. 415 is much wider and includes a promise as to future conduct not intended to be kept and also damage or harm to a person in body, mind, reputation or property.

Ingredients.—The section requires—

1. Deception of any person.
2. Fraudulently or dishonestly inducing that person
   (a) to deliver any property to any person; or
   (b) to consent that any person shall retain any property; or
   (c) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

In the definition of cheating there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced to deliver any property to any person or to consider that any person shall retain any property. The second class of acts set forth in

[1] Note N.

the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts the inducing must be intentional.

The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which such a transfer occurs; for these cases generally a provision is made in s. 417 of the Code. For the cases in which property is transferred a more specific provision is made by s. 420.

The offence of cheating is not committed if a third party, on whom no deception has been practised, sustains pecuniary loss in consequence of the accused's act[1].

Cheating and Extortion.—The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is that the extortioner obtains the consent by intimidation, and the cheat by deception[2].

Cheating and Criminal Breach of Trust and Criminal Misappropriation.—Cheating differs from the last two offences in the fact that the cheat takes possession of the property by deception. There is wrongful gain or loss in both cases and in both cases there is inducement to deliver property.

1. **'Deceiving any person.'**—'Deceiving' means causing to believe what is false, or misleading as to a matter of fact, or leading into error. Wherever a person fraudulently represents as an existing fact that which is not an existing fact, he commits this offence. A wilful misrepresentation of a definite fact with intent to defraud, cognizable by the senses—as where a seller represents the quantity of coals to be fourteen cwt., whereas it is in fact only eight cwt., but so packed as to look more; or where the seller, by manœuvring, contrives to pass off tasters of cheese as if extracted from the cheese offered for sale, whereas it is not—is a cheating[3].

The person deceived need not be a definite person to whom the false representation is made.

It is not necessary that the false pretence should be made in express words; it can be inferred from all the circumstances attending the obtaining of the property[4].

Where a person knows that the statements made by another are false, but still acts upon them with a view to entrap that person, the accused will be guilty not of the principal offence but of attempt to commit it. If a person buys milk knowing it to be watered in order to prosecute the seller, the conviction cannot be of cheating. It can be of attempt to cheat[5]. M wrote a letter to the Currency Office at Calcutta, enclosing the halves of the Government Currency Notes, stating that the other halves were lost, and enquiring what steps should be taken for the recovery of the value of the

[1] *Sundar Singh*, (1904) P. R. No. 25 of 1904.
[2] Note N.
[3] *Thomas Goss*, (1860) 8 Cox 262.
[4] *Maria Giles*, (1865) 10 Cox 44; *Khode Bux* v. *Bukeya Mundari*, (1905) 32 Cal. 941.
[5] *Kalee Modock*, (1872) 18 W.R. 61.

notes. The Currency Office, having upon enquiry discovered that the amount of the notes had been paid to the holder of the other halves and that the notes had been withdrawn from circulation and cancelled, sent M the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying M in respect of the notes. The form was filled up and signed by M and returned by him to the Currency Office. It was held that although there was no intention on the part of the Currency Office to pay the amount of the notes, M was guilty of an attempt to cheat [1]

2 (a) **'Fraudulently or dishonestly induces the person so deceived to deliver any property.'**—The words 'fraudulently' and 'dishonestly' do not govern the whole of the definition of cheating. The section is divided into two parts, of which the second provides for the case of a person who by deceiving another intentionally induces the person so deceived to do an act which causes or is likely to cause damage or harm although the deceiver has not acted fraudulently or dishonestly[2]. To describe consequences of an act to be more serious than, in fact, they were likely to be, may be to deceive but is not cheating if done without any fraudulent or dishonest intention. Thus to induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, is not cheating[3].

(b) **'Or to consent that any person shall retain any property.'**—It is equally a cheat whether a deception causes a person fraudulently or dishonestly to acquire property by delivery, or to retain property already in his possession.

(c) **'Intentionally inducing that person to do or omit to do anything which he would not do or omit, etc.** :—Intention is the gist of the offence. The person cheated must have been intentionally induced to do an act which he must not have done or to omit to do an act which he would have done owing to the deception practised on him.

Explanation.—The Explanation refers to the actul deception itself and not to the concealment of a deception by some one else.

Puffing.—The Authors of the Code observe: "If all the misrepresentations and exaggerations in which men indulge for the purpose of gaining at the expense of others were made crimes, not a day would pass in which many thousands of buyers and sellers would not incur the penalties of the law. It happens hourly that an article which is worth ten rupees is affirmed by the seller to be cheap at twelve rupees, and by the buyer to be dear at eight rupees. The seller comes down to eleven rupees, and declares that to be his last word; the buyer rises to nine, and says that he will go no higher; the seller falsely pretends that the article is unusually good of its kind, the buyer that it is unusually bad of its kind; the seller that the price is likely soon to rise, the buyer that it is likely soon to fall. Here we

1 *Govt. of Bengal* v. *Umesh Chunder Mitter*, (1888) 16 Cal. 310.

2 *Mohabat*, (1889) P. R. No. 20 of 1889.

3 *Raj Coomar Banerjee*, (1864) W. R. (Gap No.) 25.

have deceptions practised for the sake of gain, yet no judicious legislator would punish these deceptions[1]."

A simple misrepresentation of the quality of goods is not a false pretence[2]. In order to obtain an advance of money on a large quantity of plated spoons the defendants represented to a pawn-broker that they were of the best quality, that they were equal to Elkington's A, that the foundation was of the best material, and that they had as much silver upon them as Elkington's A. The jury found that these representations were wilfully false, and that by means of them an advance of money was made. It was held that the representation being a mere exaggeration or puffing of the quality of the goods in the course of a bargain, it was not a false pretence[3]. The accused induced the prosecutor to buy certain plated goods at an auction for £7 on the representation that they were the best silver plate, lined with gold, and worth £20. The foundation of the goods was Britannia metal, instead of nickel as the best goods, covered with a transparent film of silver, and they were worth only about 30*s*. It was held that there was no false pretence[4]. But when the thing sold is of an entirely different description from what it is represented to be, and the statements made are not in the form of an expression of opinion or mere praise, the offence of cheating is committed. Where the prisoner induced the prosecutor to purchase a chain from him by fraudulently representing that it was 15 carat gold, when, in fact, it was only of a quality a trifle better than 6 carat, knowing at the time that he was falsely representing the quality of the chain as 15 carat gold, it was held that the statement that the chain was 15 carat gold, not being mere exaggerated praise, nor relating to a mere matter of opinion, but a statement as to a specific fact within the knowledge of the prisoner, was a false pretence[5].

CASES.

Inducing the person decided to deliver property.—Where a person hired certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire, and to restore the property after the wedding, he being well aware that there was to be no wedding, and intending, when he got the property, to apply for its attachment in a civil suit in respect of an alleged claim[6]; and where the prisoners received a Government promissory note, promising to return certain jewels pledged to them but not intending to do so, and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender[7], this offence was held to have been committed.

Misrepresentation as to caste.—To palm off a woman as belonging to a caste different to the one to which she really belongs with the object of obtaining money amounts to the offence of cheating[8].

1 Note N.
2 *Bryan*, (1857) 7 Cox 312.
3 *Ibid.*
4 *Levine and Wood*, (1867) 10 Cox 374.
5 *John Ardley*, (1871) L. R. 1 C. C. R. 301.
6 *Kadir Bux*, (1871) 3 N.W.P. 16.
7 *Sheodurshun Dass*, (1871) 3 N. W. P. 17.
8 *Komaldass*,(1865)2W.R.7;*Jhanda Singh*, (1917) P.R. No. 6 of 1918.

Inducing the person deceived to do something.—Where a prostitute communicated syphilis to a man who had sexual intercourse with her on the strength of her representation that she was free from disease[1] this offence was held to have been committed.

Where a person put the name of a painter upon the copy of one of his pictures, in order that it may pass off as the original picture, it was held that he had committed this offence[2]. Under the Code it will amount to forgery as well.

Vendor and purchaser.—The selling of milk and water in about equal proportion as pure milk was held to support a finding of cheating[3]. Where the vendor of immoveable property omitted to mention that there was an incumbrance on the property, it was held that he could not be convicted of cheating unless it was shown either that he was asked by the vendee whether the property was incumbered and said it was not, or that he sold the property on the representation that it was unincumbered[4]. The vendee-defendant in a suit for pre-emption compromised the suit, the plaintiff agreeing to pay a certain sum in cash and to discharge certain incumbrances on the property in suit. It was subsequently discovered that the vendee had, after his purchase but before the suit, mortgaged the property, which was the subject of the suit for pre-emption. It was held that there was no obligation to disclose the mortgage and the vendee could not, on account merely of his omission to disclose the existence of this subsequent mortgage, be held guilty of the offence of cheating[5].

Where property is delivered, fraudulent or dishonest intention on the part of the accused is necessary: where any act is done through deception, that act should have caused damage or harm.—Where the accused secretly entered an exhibition building without having purchased a ticket and was there apprehended, it was held that such act did not amount to cheating[6]. If the accused had said to the door-keeper that he had a ticket, and had thus obtained access to the building, it would have been cheating. Where a person, who purchased rice from a famine relief officer, at a certain rate on condition that he should sell it at a pound less, was convicted of cheating because he did not sell it at the rate agreed on, it was held that as there had been no wrongful gain or loss to any one, no offence had been committed[7].

False entries.—Where the accused was requested to make an entry in a book of accounts belonging to the complainant, to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts, instead of making this entry entered in a language not known to the complainant that this sum had been paid to the complainant, it was held that he had committed an offence of attempt to cheat and not one under s. 465[8].

1 *Rakma*, (1886) 11 Bom. 59.
2 *Closs*, (1857) 7 Cox 494.
3 *Nana*, (1880) Unrep. Cr. C. 145.
4 *Bishan Das*, (1905) 27 All. 561.
5 *Gendan Lal* v. *Abdul Aziz Khan*, (1904) 27 All. 302.
6 *Mehervanji Bejanji*, (1869) 6 B. H.C. (Cr. C.) 6.
7 *Lal Mahomed*, (1874) 22 W.R. 82.
8 *Kunju Nayar*, (1888) 12 Mad. 114.

Passengers by railway.—Where a passenger travelled in a carriage of higher class than that for which he had paid fare[1]; where a passenger gave some part of his luggage to a co-passenger to evade the charge for overweight[2], this offence was not held to have been committed. Where a man endeavoured to evade payment of a railway fare by the production of an old pass altered as to date and number of persons, it was held that he was guilty of attempt to cheat[3].

Attempt to create false evidence.—The accused, in order to create false evidence that he had paid off a sum of Rs. 650 which he owed to complainant, filed a registered envelope with blank sheets of paper and posted it to the complainant after insuring it for Rs. 650. The complainant gave an acknowledgment of receipt of the parcel to the Post Office on receiving the same. It was held that the accused was guilty of attempt to cheat.[4].

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Cheating by personation.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

ILLUSTRATIONS.

(*a*) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

COMMENT.

To 'personate' means to pretend to be a particular person[5]. As soon as a man by word, act, or sign holds himself forth as a particular person with the object of passing himself off as that person, and exercising the right which that person has, he has personated him[6]. If a person at Oxford, who is not a member of the University, go to a shop for the purpose of fraud, wearing a commoner's cap and gown, and obtain goods, this appearing in cap and gown is a sufficient thing, although nothing passed in words[7].

The person personated may be a real or imaginary person.

Ingredients.—This section requires any one of the following essentials:

1. Pretention by a person to be some other person.
2. Knowingly substituting one person for another.

1 *Dayabhai Parjaram*, (1864) 1 B.H.C. 140.

2 *Paras Ram*, (1903) P. R. No. 25 of 1903.

3 *Gunpat*, (1868) P. R. No. 6 of 1868.

4 *Sadho Lal*, (1916) 1 P. L. J 391.

5 *Hague*, (1864) 33 L.J. (M.C.) 81.

6 *Ibid.*

7 *Barnard*, (1837) 7 C. & P. 784.

3. Representation that he or any other person is a person other than he or such other person really is.

CASES.

False representation at an examination.—Where A falsely represented himself to be B at a University Examination, got a hall-ticket under B's name, and wrote papers in B's name, it was held that A had committed the offence of cheating by personation and forgery[1].

False representation as to caste.—Where the accused represented to the prosecutor that a girl was a *brahmin* and thereby induced him to part with his money on consideration of the marriage, of the girl to his brother when the girl really was of a low caste, it was held that he was guilty of cheating by false personation[2]. Similarly, where a person represented a girl to be the daughter of a certain woman of good family, when she was within his knowledge the daughter of another woman, it was held that he was guilty of this offence[3].

Punishment for cheating.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

This section punishes simple cases of cheating. Where there is delivery of any property or destruction of any valuable security, s. 420 is the proper section to apply.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

This section applies to cases of cheating by guardians, trustees, solicitors, agents, the manager of a Hindu family, directors or managers of a bank in fraud of the shareholders. It is the abuse of trust that is met with severe punishment.

False balance-sheet for inducing to renew deposit.—Where the directors, manager, and accountant, dishonestly, that is to obtain wrongful gain for themselves or to cause wrongful loss to others, put before the shareholders

1 *Appasami*, (1889) 12 Mad. 151.

2 *Mohim Chunder Sil*, (1871) 16 W.R. 42; *Bhaiji*, (1886) Unrep. Cr. C. 301, Cr. R. No. 46 of 1886.

3 *Dhunput Ojhah*, (1867) 7 W. R. 51.

balance-sheets which they knew to be materially false and misleading and likely to mislead the public as to the condition of the Bank and concealed its true condition and thereby induced depositors to allow their money to remain in deposit in the Bank, they were held liable under this section[1].

Punishment for cheating by personation.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating and dishonestly inducing delivery of property.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

Simple cheating is punishable under s. 417. But where there is delivery or destruction of any property or alteration or destruction of any valuable security resulting from the act of the person deceiving, this section comes into operation.

CASES.

Where a person whose duty it was to ascertain and report the current rates in the *bazar*, by arrangement with persons in the *bazar*, reported rates higher than those really current, and in consequence of which higher rates were paid to sellers than they were entitled to, it was held that he had committed this offence[2]. Where the accused induced the complainant to deliver to him a bicycle under false representations that he was a commission agent and that the machine was required for an up-country purchaser, but after taking its delivery he negotiated its sale to a customer in Bombay, it was held that the offence of cheating and dishonestly inducing the delivery of property was complete as soon as the bicycle was handed over[3]. The accused by making a false representation that he was an employer of the Calcutta Municipal Corporation obtained rupees ten as subscription from the Health Officer of that Corporation towards the funds of a charitable society. The money was duly made over by the accused to the charity, but he was subsequently charged with the offence of 'cheating' and was convicted under this section and sentenced to rigorous imprisonment and fine. It was held that the conviction and sentence should be set aside, there-

[1] *Moss*, (1893) 16 All. 88.
[2] *Parmeshar Dat*, (1886) 8 All. 201.
[3] *Banaji*, (1900) 2 Bom. L. R. 621.

being no such deception in this case as to cause "wrongful loss" or "wrongful gain"[1].

Of Fraudulent Deeds and Dispositions of Property.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

421. Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This and the three following sections deal with fraudulent conveyances referred to in s. 53 of the Transfer of Property Act and the Presidency and Provincial Insolvency Acts.

This section specially refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It will cover *benami* transactions in fraud of creditors. It will apply to property both moveable and immoveable.

Compare ss. 206-210 with ss. 421-424 as they are similar in character. The former sections deal with frauds on Courts, the latter on creditors.

Dishonestly or fraudulently preventing debt being available for creditors.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section, like the preceding section, is intended to prevent the defrauding of creditors by masking property. Any proceedings to prevent the attachment and sale of debts due to the accused will fall under this section. The offence consists in the dishonest or fraudulent evasion of one's own liability.

Ashutosh Mallick, (1905) 33 Cal. 50.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section deals with fraudulent and fictitious conveyances and trusts. Under it, the dishonest execution of a *benami* deed will be punishable. Where the consideration for the sale of immoveable property was, with the consent of the purchaser, exaggerated in a deed of sale in order to defeat the claim of the pre-emptor, it was held that the purchaser was guilty of this offence[1].

The word 'consideration' does not mean the property transferred. An untrue assertion in a transfer deed that the whole of a plot of land belonged to the transferor is not a statement relating to the consideration for the transfer and is not an offence under the section[2].

Dishonest or fraudulent removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section provides for cases not coming within the purview of ss. 421 and 422. It contemplates such a concealment or removal of property from the place in which it is deposited, as can be considered fraudulent. Where one of the several partners removed the partnership books at night, and when questioned, denied having done so, this offence was held to have been committed[3]. Similarly, where a judgment-debtor, whose standing crops

[1] *Gurditta Mal*, (1901) P. R. No. 10 of 1902; *Mahabir Singh*, (1904) 25 All. 31.

[2] *Mania Goundan*, (1911) 37 Mad. 47.

[3] *Gour Benode Dutt*, (1878) 21 W. R. 10.

were attached, harvested them while the attachment was in force, this offence was held to have been committed[1]. But a removal of crops to avoid an illegal restraint was held not to amount to an offence under this section[2]. The accused who was bound under the conditions of his tenure to share the produce of his land with the landholder in a certain proportion, dishonestly concealed and removed the produce, thus preventing the landholder from taking his due share, it was held that an offence under this section was committed[3].

Of Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person[1], causes the destruction of any property or any such change in any property or in the situation thereof[2] as destroys or diminishes its value or utility, or affects it injuriously[3], commits 'mischief."

Mischief.

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

ILLUSTRATIONS.

(*a*) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(*b*) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

1 *Obayya*, (1898) 22 Mad. 151.

2 *Gopalasamy*, (1902) 25 Mad. 729.

3 *Sivanupandia Thevan*, (1914) 38 Mad. 793.

(e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Punishment for mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

COMMENT.

Ingredients—This section necessitates three things :—

(1) Intention or knowledge or likelihood to cause wrongful loss or damage to the public or to any person ;

(2) causing the destruction of some property or any change in it or in its situation ; and

(3) such destruction or change must destroy or diminish its value or utility, or affect it injuriously.

This section deals with a physical injury from a physical cause[1].

1. 'Intent to cause, or knowing that he is likely to cause wrongful loss or damage to the public or to any person.'—This section does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it[2]. The damage need not necessarily consist in the infringement of an existing, present and complete right, but it may be caused by an act done with the intention of defeating and rendering infructuous a right about to come into existence (vide ill. (d)). Where some persons belonging to one village pulled up and removed fishing stakes lawfully fixed in the sea within three miles of a shore by the villagers of another village, and the removal of the stakes, though without any intention to appropriate them, occasioned "damage," the offence amounted to mischief[3].

2. 'Causes the destruction of any property or any such change in any property etc.'—It is the essence of this offence that the perpetrator must cause the destruction of property or such change in it as destroys or diminishes its value or utility. The destruction of a document evidencing an agree-

[1] *Moti Lal*, (1901) 24 All. 155, 156.

[2] *Juggeshwar Dass* v. *Koylash Chunder*, (1885) 12 Cal. 55.

[3] *Kastya Rama*, (1871) 8 B. H. C. (Cr. C.) 63.

ment void for immorality was held to constitute this offence as it could be used as evidence for other collateral purposes[1]. The accused on receiving delivery of a registered article from a village branch postmaster was requested to sign an acknowledgment for the article received by him, but instead of returning the same duly signed he tore it up and threw it on the ground. It was held that the accused was guilty of mischief[2].

'Property' means some tangible property capable of being forcibly destroyed, but does not include easement.

'Change' means a physical change in composition or form. The section contemplates a physical injury from a physical cause. Certain Hindus present at a caste dinner had sat down to partake of the food which had been served to them, when certain other members of the caste came, and, after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, inasmuch as their action had polluted the food, and had, from a Hindu religious point of view, rendered it unfit to be eaten. The High Court held that the conviction was wrong[3]. The conclusion arrived at by the High Court is not satisfactory. Making a breach in the wall of a canal is an act which causes such a change in the property as destroys or diminishes its value or affects it injuriously[4].

3. **'As destroys or diminishes its value or utility, etc.'**.—Destruction or diminution in value of the property regarding which the offence is committed is essential.

Explanation 1.—Illustrations (*e*) and (*f*) exemplify this explanation. It is not essential that the property interfered with should belong to the person injuriously affected. D, as lessee of Government, held rights of fishery in a particular stretch of a river. C, by diverting the water of that river, converted the bed of the river for a considerable distance into dry land, or land with a very shallow covering of water upon it, and by so doing he was enabled to destroy, and did destroy, very large quantities of fish, both mature and immature. It was held that when C deliberately changed the course and condition of the river in the manner described to the detriment of D, he was guilty of the offence of mischief[5].

Explanation 2.—A person who destroys property which, at the time, belongs to himself with the intention of causing, or knowing that it is likely to cause, wrongful loss or damage to any body else is guilty of this offence[6]. Illustrations (*d*) and (*g*) shew that a man may commit mischief on his own property. In order, however, to his doing so, it is necessary that he intends to cause wrongful loss to some person, as in the cases stated in the illustrations.

CASES.

No mischief if no wrongful loss or damage to the public or to any person.—Where the accused was found catching fish in a public river, the right of

1 *Vyapuri*, (1832) 5 Mad. 401.
2 *Sukha Singh*, (1905) P. R. No. 24 of 1905.
3 *Moti Lal*, (1901) 24 All. 155, 156.
4 *Bansi*, (1912) 34 All. 210.
5 *Chanda*, (1905) 28 All. 204.
6 *Dharma Dass Ghose* v. *Nusserudin*, (1886) 12 Cal. 660.

fishing in which was let out by Government to another but no fencing was put up to shut up the fish in any manner[1]; where the servant of a person pulled down a building which a Civil Court had declared ought not to have been erected[2]; and where a person dug ou' tombs of the forefathers of the complainant, which stood on his own lands[3], it was held in all those cases that this offence was not committed.

Mischief causing damage to the amount of fifty rupees.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming animal of the value of ten rupees.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This section is intended to prevent cruelty to animals and consequent loss to the owner.

Maiming' refers to those injuries which cause the privation of the use of a limb or a member of the body.[4] 'Maiming' implies a permanent injury[5], wounding is not necessarily maiming.

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox[1], whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

COMMENT

This section provides for enhanced punishment owing to the greater value of the animals mentioned therein.

1 *Bhagiram* v. *Abar Dome*, (1888) 15 Cal. 388.

2 *Rajcoomar Singh*, (1878) 3 Cal. 573.

3 *Chotualiy*, (1902) 4 Bom. L. R. 463.

4 *Fattehdin*, (1881) P. R. No. 33 of 1881.

5 *Richard Jeans*, (1844) 1 C. & K. 539.

I. 'Bull, cow or ox.'—According to the Madras High Court a 'calf' does not come within the terms bull, cow, or ox[1]; but the Calcutta High Court has held that the words 'bull' and 'cow' in this section include the young of those animals. The section specifies the more valuable of the domestic animals, without any regard to age ; but in respect of other kinds of animals not so specified the section will not apply unless the particular animal in question is shown to be of the value of fifty rupees or upwards[2].

Bull set at large according to religious usage.—Such bulls are not the subject of ownership by any person, as the original owner surrenders all his rights as its proprietor and gives it freedom to go whithersoever it chooses. They are, therefore, *nullius proprietas*, and as such, cannot be the subject of mischief[4]. But if there is not a total abandonment of control and property, the animal would not cease to be the private property of the owner. There is also a material distinction in principle between the case of an animal, property in which is wholly renounced or abandoned and allowed in accordance with superstitious or religious usage to roam at large free from control, and that of such an animal so abandoned and at large after dedication to a temple[4].

Mischief by injury to works of irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

COMMENT.

This section deals with diminution of water supply, *e. g.*, the placing across a channel of an embankment. Section 278 applies if the water is fouled so as to be unfit for use.

This section applies equally to irrigation channels as to other sources of irrigation, such as tanks and ponds.

Mischief by injury to public road, bridge, river or channel.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling

1 *Cholay*, (1864) Mad. Unrep.

2 *Hari Mandle* v. *Jafar*, (1895) 22 Cal. 457.

3 *Romesh Chunder Sanyal* v. *Hiru Mondal*, (1890) 17 Cal. 852.

4 *Nalla*, (1887) 11 Mad. 145.

or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by destroying, moving or rendering less useful a light-house or sea-mark.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT.

This section is an extension of the principle laid down in s. 281. Sea-marks are very important in navigation and any tampering with them may lead to disastrous results.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

This section is similar to the last section but the punishment prescribed is not so severe because tampering with land-marks does not lead to disastrous results.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, or where the property is agricultural produce ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy house, etc.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The section contemplates the destruction of a building. A 'building is not necessarily a finished structure[1]. An unfinished house, of which the walls were built and finished, the roof on and finished, a considerable part of the flooring laid, and the internal walls and ceiling prepared ready for plastering, was held to be a building[2].

Mischief with intent to destroy or make unsafe a decked vessel or one of 20 tons burden.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The vessel must be a 'decked vessel' or a 'vessel of a burden of twenty tons or upwards.' This limitation is laid down to exclude small crafts of

1 *Manning*, (1871) L. R. 1 C. C. R. 338.

2 *William Edgell*, (1867) 11 Cox 132.

all kinds. The intention of the Legislature is to punish mischief committed on vessels which are likely to carry passengers.

Punishment for the mischief described in s. 437 committed by fire or explosive substance.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section merely extends the principle laid down in the last section. It imposes higher penalty owing to the dangerous nature of the means used.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property or with intent that such theft or misappropriation of property may be committed shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section punishes an act which is akin to piracy. As to what amounts to piracy, see p. 10.

Mischief committed after preparation made for causing death or hurt.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint-shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Of Criminal Trespass.

Criminal trespass.

441. Whoever enters into or upon property in the possession of another[1] with intent to commit an offence[2] or to intimidate, insult or annoy any person in possession[3] of such property.

or, having lawfully entered into or upon such property, unlawfully remains there[4] with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass."

COMMENT.

The Authors of the Code say : "We have given the name of trespass to every usurpation, however slight, of dominion over property. We do not propose to make trespass, as such, an offence, except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then we propose to visit it with a light punishment, unless it be attended with aggravating circumstances[1]."

Ingredients.—The section requires—

(1) Entry into or upon property in the possession of another.

(2) If such entry is lawful then unlawfully remaining upon such property.

(3) Such entry or unlawful remaining must be with intent

(*a*) to commit an offence ; or

(*b*) to intimidate, or insult, or annoy any person in possession of the property.

The use of criminal force is not a necessary ingredient.

I. 'Enters into or upon property in the possession of another.'—'Property' in this section means immoveable corporeal property, and not incorporeal property. A right of fishery is not property of such a nature as that a man who unlawfully infringes that right can be said to enter upon property in the possession of another within the meaning of this section[2]. Similarly, a person plying a boat for hire within the prohibited distance from a public ferry cannot be said, with reference to such ferry, to commit criminal trespass[3].

The possession must be actual possession of some other person than the alleged trespasser[4]. A man may be guilty of criminal trespass on the land of another without ever personally setting foot on the land, if, for example, he causes others to build on the land against the wishes and in spite of the protest of the owner of the land[5].

Joint possession.—A prosecution for criminal trespass on the part of one co-owner against another co-owner will not lie unless there has been an ouster from possession or some destruction or waste of the common property[6]. A joint owner of property is entitled to have joint possession re-

1 Note N.

2 *Charu Nayiah*, (1877) 2 Cal. 354.

3 *Muthra* v. *Jawahir*, (1877) 1 All. 527.

4 *Foujdar*, (1878) P.R. No. 28 of 1878; *Kunji Lal*, (1913) 12 A.L.J.R. 151.

5 *Ghasi*, (1917) 39 All. 722.

6 *Khaja Mahomed Hamin Khan*, (1881) 3 Mad. 178.

stored to him in a Civil Court; but he is not justified in taking the law into his own hands to recover possession. If he does so he is liable for criminal trespass[1]. A joint owner of land who enters upon the land with the intention or knowledge of doing a wrongful act commits criminal trespass[2]

2. 'Intent to commit an offence, etc.'—Criminal trespass depends on the intention of the offender and not upon the nature of the act If, for instance, a person with intent to save his family and property from imminent destruction commits civil trespass on his neighbour's land, and cuts a portion of a dam belonging to his neighbour, he is not guilty of criminal trespass[3].

3. Or to intimidate, insult or annoy any person in possession.'—Trespass is an offence *only* if it is committed with one of the *intents* specified in the section and proof that a trespass committed with some other object was *known* to the accused to be likely or certain to cause insult or annoyance is insufficient to sustain a conviction[4].

It is not necessary that the offence should be directed against the person in possession. It is sufficient that the property entered upon should be in the possession of another[5].

The word 'annoyance' must be taken to mean annoyance that would generally and reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual[6]. Where a person claiming the title to property, whether his title be good or bad, enters without any legal justification upon property in the established possession of another, he must be inferred to have had an intent to annoy the persons in possession, even though he had no primary desire to annoy, and his only object was to obtain possession for himself[7].

The words 'any person in possession,' according to the Bombay High Court, do not mean only "a complainant in possession," there being no authority for taking the offence of mischief and trespass out of the general rule which allows any person to complain of a criminal act[8]. But the Calcutta High Court has held that it must be proved that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under s. 345 of the Code of Criminal Procedure[9].

4. 'Having lawfully entered into or upon such property, unlawfully remains there.'—The original entry may be lawful, but if the person entering remains on the property with the intent specified in the section he commits trespass.

Bona fide claim.—If a person enters on land in the possession of another in the exercise of a *bona fide* claim of right, but without any intention to

[1] *Gopalrao Venkatesh*, (1908) 10 Bom. L. R. 285.
[2] *Ram Prasad*, (1911) 8 A.L.J.R. 927.
[3] *Madan Mandal*, (1913) 41 Cal. 662.
[4] *Vullappa* v. *Bheema Row*, (1917) 41 Mad. 156, F. B.
[5] *Chinkwana*, (1901) 1 U. B. R. (1897-1901), 352, 353.
[6] *Gobind Prasad*, (1879) 2 All. 465, 467.
[7] *Ram Saran*, (1906) P. R. No. 12 of 1906, F. B.
[8] *Keshavlal Jekrishna*, (1896) 21 Bom. 536.
[9] *Chandi Pershad* v. *Evans*, (1894) 22 Cal. 123, 130.

intimidate, insult, or annoy, the person in possession, or to commit an offence, then, although he may have no right to the land, he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitutes the offence[1].

CASES.

Entry leading to annoyance.—Where the accused enclosed and cultivated a portion of a burial ground, it was held that he had committed this offence as his act was calculated to cause annoyance to persons using the burial ground[2]. Where the accused entered into the complainant's house with intent to have illicit intercourse with his sister, it was held that he was guilty of this offence[3].

Entry to make a survey.—During the pendency of a civil suit, certain persons, on behalf of the plaintiff, went on to the premises belonging to the defendant for the purpose of making a survey and for getting materials for a hostile application against the defendant. They went (some of them armed) and, without the permission of the defendant, in his absence, and when the defendant's servants objected to their action, persisted in their trespass, and endeavoured to prevent opposition by making false statements as to the authority under which they were acting. It was held that their action amounted to criminal trespass[4].

Acts not held to be criminal trespass.—Where the accused secretly entered an exhibition building without a ticket, but without any of the intents specified in this section[5] ; where a person effected an entry into a market with intent to evade payment of market dues[6]; where A having shot a deer near B's land followed it into B's land for the purpose of killing it although he was off the land beforehand[7]; and where a zemindar under the pretext that one of his tenants had left the village and abandoned his holding, took possession of the tenant's holding wrongfully[8], this offence was not held to have been committed.

House-trespass.

442. Whoever commits criminal trespass by entering into[1] or remaining in any building[2], tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

1 *Budh Singh*, (1879) 2 All. 101, 103.

2 (1871) 6 M.H.C. App. xxv.

3 *Jiwan Singh*, (1908) P.R. No. 17 of 1908.

4 *Golap Pandey* v. *R. H. Boddam*, (1889) 16 Cal. 715.

5 *Mehervanji Bejanji*, (1869) 6 B. H. C, (Cr. C.) 6.

6 *Varthappa Nayakan*, (1882) 5 Mad. 382.

7 *Chunder Narain* v. *Farquharson*, (1879) 4 Cal. 837.

8 *Jangi Singh*, (1903) 26 All. 194 ; *Bazid*, (1904) 27 All. 298.

COMMENT.

The offence of criminal trespass may be aggravated in several ways. It may be aggravated by the way in which it is committed, and by the end for which it is committed.

1. **'Entering into.'**—The introduction of any part of the trespasser's body is entering sufficient to constitute house-trespass[1].

2. **'Building.'**—What is a 'building' must always be a question of degree and circumstances: its ordinary and usual meaning is a block of brick or stone work covered in by a roof[2]. The mere surrounding of an open space of ground by a wall or fence of any kind cannot be deemed to convert the open space itself into a building, and trespass thereon does not amount to house-trespass[3]. A cattle enclosure, which was merely a piece of ground enclosed on one side by a wall and on the other three sides by a thorn-hedge, was held to be not a 'building[4].'

CASES.

It is no offence to present a petition of review even if presented in a way so as to distress the person to whom it is presented.—C, a rate payer, who had filed a petition against an assessment, which in his absence had been dismissed, entered a room, where a Committee of Municipal Commissioners were seated hearing and deciding petitions in assessment matters, ostensibly with the object of presenting a petition for the revision of his assessment. The Chairman ordered him to leave the room, and, on his refusal to do so, he was turned out. Outside the room in the verandah he addressed the crowd complaining that no justice was to be obtained from the Committee. It was held that C had committed no offence[5].

Entry effected not to commit an offence is not house-trespass.—An entry into a cattle-pen to prosecute an intrigue with an unmarried woman of over sixteen years of age was held by the Punjab Chief Court to be not criminal trespass within the meaning of this section[6]. But the same Court has recently held that this would amount to annoyance if known and would, therefore, amount to trespass[7]. The Madras and the Calcutta High Courts are of the opinion that such an act would not amount to trespass[8].

Lurking house-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass.

1 *Vide Explanation.*

2 *Moir* v. *Williams*, [1892] 1 Q.B. 264, 270.

3 *Palani Goundan*, (1896) 1 Weir 523.

4 *Kohmi*, (1914) P. R. No. 24 of 1914.

5 *Chandi Pershad* v. *Evans*, (1894) 22 Cal. 123.

6 *Ramzan*, (1905) P.R. No. 28 of 1905

7 *Jivan Singh*, (1908) P.R. No. 17 of 1908.

8 *Pamba Rangadu*, (1896) 1 Weir 537; *Ambika Charan Sarkar*, (1906) 4 C. L. J. 169.

COMMENT.

The Authors of the Code say : "House-trespass, again, may be aggravated by being committed in a surreptitious or in a violent manner. The former aggravated form of house-trespass we designate as lurking house-trespass ; the latter we designate as house-breaking. Again, house-trespass, in every form, may be aggravated by the time at which it is committed. Trespass of this sort has, for obvious reasons, always been considered as a more serious offence when committed by night than when committed by day. Thus we have four aggravated forms of that sort of criminal trespass which we designate as house-trespass, lurking house-trespass, house-breaking, lurking house-trespass by night, and house-breaking by night.

"These are aggravations arising from the way in which the criminal trespass is committed. But criminal trespass may also be aggravated by the end for which it is committed. It may be committed for a frolic. It may be committed in order to a murder. It may also often happen that a criminal trespass which is venial, as respects the mode, may be of the greatest enormity as respects the end; and that a criminal trespass committed in the most reprehensible mode may be committed for an end of no great atrocity. Thus A may commit house-breaking by night for the purpose of playing some idle trick on the inmates of a dwelling. B may commit simple criminal trespass by merely entering another's field for the purpose of murder or gang robbery. Here A commits trespass in the worst way. B commits trespass with the worst object. In our provisions, we have endeavoured to combine the aggravating circumstances in such a way that each may have its due effect in settling the punishment[1]."

CASES.

Entry upon the roof of a building may be criminal trespass. But it cannot sustain a conviction for lurking house-trespass[2] or for house-breaking[3].

Lurking house-trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

House-breaking.

445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

1 Note N.

2 *Alla Bakhsh*, (1886) P. R. No. 9 of 1887.

3 *Fazla*, (1890) P. R. No. 9 of 1890.

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house, or building occupied with a house and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

ILLUSTRATIONS.

(*a*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f*) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g*) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

COMMENT.

Invasion of a person's residence should naturally be meted out with deterrent punishment. This section describes six ways in which the offence of house-breaking may be committed. Clauses 1 to 3 deal with entry which is effected by means of a passage which is not ordinary. Clauses 3 to 6 deal with entry which is effected by force.

According to English law to constitute house-breaking there must be always an actual breaking of some part of the house by force or a breaking by construction of law, for example by threat, fraud or conspiracy. Under the Code mere entry through a window not intended for human entrance is enough.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

House-breaking by night.

COMMENT.

The preceding section contains an elaborate definition of house-breaking. The addition in this section of the element of time, turns the offence into 'house-breaking by night,' the equivalent to the crime of 'burglary' in English law. The analysis of this offence suggests a division of its ingredients into—(1) the breaking; (2) the entry; (3) the place; (4) the time; and (5) the intent.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for criminal trespass.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both.

Punishment for house-trespass.

House-trespass in order to commit offence punishable with death.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

COMMENT.

See page 35 where a list of offences punishable with death is given.

House-trespass in order to commit offence punishable with transportation for life.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

COMMENT.

See page 35 where a list of offences punishable with transportation is given.

House - trespass in order to commit offence punishable with imprisonment.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

COMMENT.

This section is similar to ss. 449 and 450. It provides punishment for house-trespass committed with intent to commit an offence punishable with imprisonment. Where the accused was convicted of house-breaking, his object being to have sexual intercourse with complainant's wife, it was held that the conviction was valid[1]. The omission of the husband to prosecute for adultery does not absolve the prisoner from criminal liability under s. 457[2].

House - trespass after preparation for hurt, assault or wrongful restraint.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of

[1] (1875) 8 M. H. C. App. vi.

[2] *Bandhu*, (1894) Cr. R. No. 11 of 1894; Unrep. Cr. C. 689.

assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

COMMENT.

Section 451 envelopes the provisions of this section. But the Legislature has enacted this section to provide higher punishment where house-trespass is committed in order to cause hurt, or to assault, or to wrongfully restrain any person.

Punishment for lurking house-trespass or house-breaking.

453. Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

COMMENT.

This section provides penalty for the offences defined in ss. 443 and 444. In all "house-breaking" there must be "house-trespass," and in all "house-trespass" there must be "criminal-trespass." Unless, therefore, the intent necessary to prove "criminal trespass" is present, the offence of house-breaking or house-trespass cannot be committed.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

454. Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

COMMENT.

This is an aggravated form of the offence described in the last section The latter portion of this section is framed to include the cases of house-trespassers and house-breakers by night who have not only intended to commit but have actually committed theft[1].

Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

455. Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of

[1] *Zor Singh*, (1887) 10 All. 146.

wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The relationship between this section and s. 453 is the same as that between ss. 452 and 450. This section is similar to s. 458. The only difference is that the trespass is here committed by day whereas under s. 458 it is committed during night.

Punishment for lurking house-trespass or house-breaking by night.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

Lurking house-trespass or house-breaking is ordinarily punishable under s. 453; but when it is committed at night this section is applicable. The intent necessary to prove 'criminal trespass' must be present. Where the accused persons, execution creditors, broke open the complainant's door before sunrise with intent to distrain his property for which they were convicted on a charge of lurking house-trespass by night or house-breaking by night, it was held that as they were not guilty of the offence of criminal trespass the conviction must be quashed[1]

CASES.

Scaling a wall.—Effecting entrance into a house at night by scaling a wall was held to constitute house-breaking by night[2].

Departure through a door way.—The accused entered in a house at night and effected his departure from the house after knocking down a person who stood in the door way. It was held that the conviction for house-breaking by night was good[3].

Entry to commit adultery.—Where a stranger, uninvited and without any right to be there, effected an entry in the middle of the night into the sleeping apartment of a woman, a member of a respectable household, and, when an attempt was made to capture him, used great violence in his efforts to make good his escape, it was held that the Court should presume that the entry had been made with such an intent as was provided for by this section[4]. The accused was found inside the house of the complainant at midnight, and his presence was discovered by the wife of the complainant cry-

1 *Jotharam Davay*, (1878) 2 Mad. 30.
2 *Emdad Ally*, (1865) 2 W. R. 65.
3 *Solai*, (1892) 1 Weir 530.
4 *Koilash Chandra Chakrabarty*, (1889) 16 Cal. 657; *Balmakand Ram v. Ghansamram*, (1894) 22 Cal. 391; *Permanundo Shaha v. Brindabun Chung*, (1895) 22 Cal. 994.

ing out that a thief was taking away her neck ornament. The evidence of the complainant clearly showed that the accused was not there with the consent, or at the invitation, or for the pleasure of the complainant. It was held that the accused was properly convicted under this section, it being for him to show that his intention was, under the circumstances, innocent[1].

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

COMMENT.

The offence under this section is an aggravated form of the offence described in the last section.

CASES.

Adultery.—Where the accused was convicted of an offence of house-breaking by night with intent to commit adultery, and the complainant, the owner of the house, not being the husband of the woman with whom the adultery was to be committed, and the accused not intending to commit any offence except adultery, it was held that the omission of the husband to prosecute for the adultery did not absolve the prisoner from criminal liability under this section[2]. Where, on a charge under this section, it was proved to the satisfaction of the Court that the accused did enter the complainant's house in order to have sexual intercourse with a woman who, he knew, was the wife of the complainant, and further that he did so without the husband's consent, and the accused was convicted, it was held that the conviction was proper. It was not necessary that the complainant should bring a specific charge of adultery[3].

Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with

1 *Ishri*, (1906) 26 A. W. N. 279.
2 *Bandhu*, (1894) Cr. R. No. 11 of 1894, Unrep. Cr. C. 689.
3 *Kangla*, (1900) 23 All. 82.

imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

COMMENT.

This section is similar to ss. 452 and 455.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The offence under this section is an aggravated form of the offence described in the last section.

This and the following section provide for a compound offence, the governing incident of which is that either a 'lurking house-trespass' or 'house-breaking' must have been completed in order to make a person, who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt, responsible under those sections.

The grievous hurt must be caused, or the attempt must be made, during the time that the house-breaking is being committed, and not after that offence is completed, and the offender has left the premises

All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section deals with the constructive liability of persons jointly concerned in committing 'lurking house-trespass' or 'house-breaking by night' in the course of which death or grievous hurt to any one is committed. It is immaterial who causes death or grievous hurt. Every person jointly concerned in committing such house-trespass or house-breaking shall be punished in the manner provided in the section.

Dishonestly breaking open receptacle containing property.

461. Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

This and the following section provide for the same offence. As soon as the receptacle is broken open or unfastened the offence is complete.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any close receptacle which contains or which he believes to contain property, without having authority to open the same dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

Forgery.

463. Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Making a false document.

464. A person is said to make a false document—

First.—Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or

executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

ILLUSTRATIONS.

(*a*) A has a letter of credit upon B for Rs. 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d*) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f*) Z's will contains these words —" I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out

B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g*) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B, dishonestly erases the words "Pay to Z or his order" and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h*) A sells and conveys an estate, to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k*) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

ILLUSTRATIONS.

(*a*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b*) A writes the word "accepted' on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(*d*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be

believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his life-time, may amount to forgery.

ILLUSTRATION.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Punishment for forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

The offence of forgery is defined in ss. 463 and 464 of the Code. Under s. 463 the making of a false document with any of the intents therein mentioned is forgery, and s. 464 sets forth when a person is said to make a 'false document' within the meaning of the Code.

The definition of forgery in the Code is not as simple and clear as the definition of forgery in common law. Forgery in England is not defined by Statute. Forgery in common law is defined as the fraudulent making or alteration of a writing to the prejudice of another man's right.

Scope.—Section 463 contemplates two classes of intents, and it is clear that it is not an essential quality of the fraud mentioned in the section that it should result in or aim at the deprivation of property.[1]

Ingredients.—The elements of forgery are—

1. The making of a false document or part of it.
2. Such making should be with intent
   (a) to cause damage or injury to (i) public, or (ii) any person; or
   (b) to support any claim or title; or,
   (c) to cause any person to part with property; or

[1] *Abbas Alli*, (1896) 25 Cal. 512, 521, F. B., overruling *Haradhan*, (1892) 19 Cal. 380.

(*d*) to enter into any express or implied contract ; or

(*e*) to commit fraud or that fraud may be committed.

1. 'Makes any false document.'—To constitute forgery the simple making of a 'false document' is sufficient. What amounts to making of a 'false document' is explained in s. 464. It is not necessary that the document should be published or made in the name of a really existing person (*vide* Explanation 2). But it must either appear on its face to be, or be in fact, one which, if true, would possess some legal validity, or, in other words, must be legally capable of effecting the fraud intended[1]. A writing, which is not legal evidence of the matter expressed, may yet be a 'document' if the parties framing it believed it to be, and intended it to be, evidence of such matter[2]. Thus forging a deed will amount to this offence, although a statute requires the deed in a particular form, or to comply with certain requisites, and the forged deed is not in that form or does not comply with those requisites[3].

2 (a). 'To cause damage or injury to public or any person'.—The damage or injury must be intended to be caused by the false document to public or any individual.

(b) 'Support any claim or title.'—Even if a man has a legal claim or title to property, he will be guilty of forgery if he counterfeits documents in order to support it. See illustrations (*f*), (*g*), (*h*), and (*i*).

The term 'claim' is not limited in its application to a claim to property. It may be a claim to anything, as, for instance, a claim to a woman as the claimant's wife, a claim to the custody of a child as being the claimant's child, or a claim to be admitted to attendance at a law class in a college, or to be admitted to a university or other examination, or a claim to the possession of immoveable or any other kind of property[4].

(c) 'To cause any person to part with property.'—It is not necessary that the property with which it is intended that the false document shall cause a person to part, should be in existence at the time when the false document was made. For example, if A gave an order to B to buy the material for making and to make a silver tea service for him, and C, before the tea service was made or the materials for making it had been bought, were to make a false letter purporting, but falsely, to be signed by A, authorising B to deliver to D the tea service when made, C would have committed forgery within the meaning of s. 463 by making that false document with intent to cause B to part with property, namely, the tea service, when made[5]. A written certificate has been held to be 'property' within the meaning of this section[6].

(d) 'Intent to commit fraud.'—The offence of forgery is complete if a document, false in fact, is made with intent to commit a fraud although

1 *Jawala Ram*, (1895) P.R. No. 12 of 1895.

2 *Sheefait Ally*, (1868) 10 W. R. 61; 2 B. L. R. 12.

3 *Lyon*, (1813) R. & R. 255.

4 *Soshi Bhushan*, (1893) 15 All. 210, 217.

5 *Ibid*, p. 218.

6 *Ibid*, p. 218.

it may not have been made with any one of the other intents[1] specified in s. 463[2].

Where there is an intention to deceive and by means of the deceit to obtain an advantage there is fraud, and if a document is fabricated with such intent it is a forgery[3]. The majority of the Judges of the Madras High Court in a recent Full Bench case seem to be of opinion that an intention to secure a benefit or advantage to the party deceiving by means of the deceit constitutes an intention to defraud[4]. The expression 'intend to defraud', implies conduct coupled with intention to deceive and thereby to injure; in other words, 'defraud' involves two conceptions, namely, deceit and injury to the person deceived. The addition of a name to the list of attesting witnesses of an instrument which need not in law be attested is held not to amount to making a false document[5].

Deprivation of property, actual or intended, does not constitute an essential element of an intention to defraud[6].

Intent to defraud any particular person not necessary.—A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, will be sufficient to support a conviction[7]. It is not necessary to defraud a particular person, if the consequence of the act would necessarily or possibly be to defraud any person, but there must, at all events, be a possibility of some person being defrauded by the forgery[8]. It is not necessary that there should have been some person defrauded. A man may have an intent to defraud and yet there may not be any person who could be defrauded by his act. Suppose a person with a good account at his bankers, and a friend, with his knowledge, forges his name to a cheque either to try his credit, or to imitate his handwriting, there would be no intent to defraud, though there would be parties who might be defrauded; but where another person has no account at his bankers, but a man supposes that he has, and on that supposition forges his name, there would be an intent to defraud in that case, although no person could be defrauded[9].

Cases.—Intent to defraud.—If a person have the authority of another to write the name of that other to an acceptance it is no forgery; neither is it if he had no such authority, provided that he had fair ground for considering that he had such authority, and did so consider, and wrote the acceptance, not meaning to defraud or injure any one[10]. Even if there is no previous authority of the person whose name is put on a bill of exchange, still if that person has been informed of it at the time and he does not repudiate it, it will not amount to forgery[11]. But if A put the name of B on a bill of exchange as

[1] *Soshi Bhushan*, (1893) 15 All. 210, 218.

[2] *Kotamraju Venkatrayudu*, (1905) 28 Mad. 90.

[3] *Muhammad Saeed Khan*, (1898) 21 All. 113, 115.

[4] *Kotamraju Venkatrayadu*, (1905) 28 Mad. 90. The majority of the Court have expressed their non-concurrence with the case of *Srinivasan*, (1902) 25 Mad. 726.

[5] *Surendra Nath Ghose*, (1910) 12 C.L.J. 277, 289; 14 C.W.N. 1076.

[6] *Abbas Ali*, (1896) 25 Cal. 512, F. B.

[7] *Dhunum Kazee*, (1882) 9 Cal. 53.

[8] *Marcus*, (1846) 2 C. & K. 356.

[9] *Nash*, (1852) 2 Den. Cr. C. 493.

[10] *Parish*, (1837) 8 C. & P. 94.

[11] *Smith*, (1862) 3 F. & F. 504.

acceptor without B's authority, expecting to be able to meet it when due, or expecting that B will overlook it, this is forgery[1]. Similarly, if a person having the blank acceptance of another, be authorized to write on it a bill of exchange for a certain limited amount, and he write on it a bill of exchange for a larger amount, with intent to defraud either the acceptor or any other person, this is forgery[2]. A forged cheque on the D Bank was presented for payment at the S Bank, where the supposed drawer never kept cash. It was held that this was sufficient evidence of an intent to defraud the partners of the S Bank although there was no probability of their paying the cheque, even if it had been genuine[3].

Copy.—The offence of forgery may be committed by a person who fabricates a false document purporting to be a copy of another document for the purpose of the same being used in evidence. The accused, in a suit for possession of land, to support his pedigree, put in a deed of dower, and a deed of security purporting to be copies of the original document filed in a previous suit, but it was found that both the copies contained two more names of witnesses than the original. It was held that the accused had committed forgery[4]. Similarly, a person was convicted of using as genuine a document which he knew to be forged, though he, in the first instance, produced only a copy of it[5]. Recently it has been held that a copy of a false document is not a false document within the meaning of this section[6].

Section 464.—This section says how a ' false document ' is made.

3. ' **Fraudulently.** '—This word is used in ss. 464 and 471 together with the word 'dishonestly' and presumably in a sense not covered by the latter word. If, however, it be held that 'fraudulently' implies deprivation either actual or intended, then apparently that word would perform no function which would not have been fully discharged by the word ' dishonestly ' and its use would be mere surplusage. So far as such a consideration carries any weight it obviously inclines in favour of the view that the word 'fraudulently' should not be confined to transactions of which deprivation of property forms a part[7]. Those decisions which proceed on the ground that an act is not fraudulent unless it causes or is intended to cause loss or injury to some one would seem to take too narrow a view of the meaning of the word ' fraudulently ' as used in the Code[8].

4. ' **Makes** '.—"The ' making ' of a document, or part of a document, does not mean ' writing ' or 'printing' it, but signing or otherwise executing it; as in legal phrase we speak of ' making an indenture ' or ' making a promissory note, ' by which is not meant the writing out of the form of the

1 *Forbes*, (1835) 7 C. & P. 224.

2 *Hart*, (1836) 7 C. & P. 652; Mood. 486.

3 *Crowther*, (1832) 5 C. & P. 316.

4 *Essan Chunder Dutt* v. *Baboo Prannauth Chowdry*, (1863) Marsh. 270; W. R. F. B. 71. *Sir Surendra Nath Ghose*, on the preceding page.

5 *Nujum Ali*, (1866) 6 W. R. 41.

6 *Gopalakrishna Heggade*, (1910) 20 M. L. J. R. 534.

7 *Abbas Ali*, (1896) 25 Cal. 512, 521, F. B., overruling *Haradhan*, (1892) 19 Cal. 380.

8 *Kotamaraju Venkatrayadu*, (1905) 28 Mad. 90, 102, contra Subramania Ayyar, J.

instrument, but the sealing or signing it as a deed or note. The fact that the word 'makes' is used in the section in conjunction with the words 'signs,' 'seals' or 'executes,' or makes any mark 'denoting the execution etc.', seems to me very clearly to denote that this is its true meaning. What constitutes a false document, or part of a document, is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some person to the document, or part of a document, knowing that the seal or signature is not his, and that he gave no authority to affix it. In other words, the falsity consists in the document, or part of a document, being signed or sealed with the name or seal of a person who did not in fact sign or seal it[1]".

5. 'Signs, seals or executes.'—Signing or sealing a document completes its execution. Putting a seal to a genuine signature to a document which is invalid without a seal is a forgery[2]. Putting the name of a painter upon the copy of one of his pictures in order that it may be passed off as the original will be forgery under the Code, though this is held to be cheating under the English law[3].

6. 'At a time which he knows that it was not made, signed, sealed or executed'.—Antedating a document constitutes forgery[4]. It is forgery to make a deed fraudulently with a false date, when the date is a material part of the deed, although the deed is in fact made and executed by and between the persons by and between whom it purports to be made and executed[5].

Cases.—False document should have been actually made.—Where a person gave orders for the printing of certain receipt forms similar to those used by a certain company, and corrected the proofs of the same, it being his intention to use the receipt forms in order to commit a fraud, it was held that he could not be convicted of forgery until one of the printed forms had been converted by him into a false document, nor of an attempt to commit forgery until he had done some act towards making one of the forms a false document: until a form had been converted into a document, all that was done consisted in mere preparation for the commission of an offence[6]. But this case has not been followed by the Allahabad High Court[7].

False entries to commit fraud.—Where the accused was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts, instead of making this entry as requested, he entered in a language not known to complainant that the sum had been paid to the complainant, it was held that he had committed not forgery but an attempt to cheat[8].

1 Per Garth, C. J., in *Riasat Ali*, (1881) 7 Cal. 352, 355.
2 *Collins*, (1844) 1 Cox 57.
3 *Closs*, (1857) 7 Cox 494.
4 *Sookmoy Ghose*, (1868) 10 W.R. 23.
5 *Ritson*, (1869) L. R. 1 C. C. R. 200.
6 *Riasat Ali*, (1881) 7 Cal. 352.
7 *Mac Crea*, (1893) 15 All. 173.
8 *Kunju Nayar*, (1888) 12 Mad. 114.

Personation at an examination.—A falsely represented himself to be B at a University Examination, got a hall ticket under B's name, and headed and signed answer papers to questions with B's name. It was held that A had committed the offence of forgery and cheating by personation[1].

Fabricating a letter or certificate.—The accused, who was a copyist in the Sub-Divisional Office at B, applied for a clerkship then vacant in that office. An endorsement on his application, recommending him for the post and purporting to have been made by the Sub-Divisional Officer at B, was found to have been falsely made by the accused. The application was accompanied by a letter, also fabricated by the accused, purporting to be from the Collector to the Sub-Divisional Officer at B, informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Sub-Divisional Officer, having some suspicions as to the genuineness of this letter, wrote a demi-official letter to the Collector to ascertain whether he had really written it, and this being posted in the local post office the accused fabricated a third document, purporting to be a letter from the Sub-Divisional Officer to the Post Master asking him to stop the despatch of the demi-official letter. It was held that the accused had committed forgery with regard to the first two documents, but with regard to the third, it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of s. 464 because he made it to screen himself from fraud[2]. The accused applied to the Superintendent of Police at Poona for employment in the Police force. In support of his application he presented two certificates which he knew to be false. One of these certificates was a wholly fabricated document, whilst the other was altered by several additions made subsequently to the issue of the certificate. It was held that the accused was guilty of offences under ss. 463 and 471[3]. Where a private candidate for the Matriculation examination of the University of Madras, for the purpose of being admitted to the examination, forwarded to the Registrar of the University, as required by the bye-laws, a certificate that he was of good character and that he had completed his twentieth year which purported to be signed by the Head-Master of a recognised school, but was, in fact, not signed by him but was signed by the candidate in his own writing, it was held that the certificate was a forged document within the meaning of ss. 467 and 464[4]. A person lawfully entitled to possess arms and ammunitions signing the prescribed certificate of purchase of the same in the name of another with an address not his own, and thereby deceiving the gun-smith and the Government and defeating the object of the certificate, commits forgery[5].

Conviction will be for abetment if it is not proved that accused himself made the document.—A Police Constable's character and service roll in his custody was found to have been tampered with in this way, that a page, apparently containing unfavourable remarks to the Constable, had

1 *Appasami*, (1889) 12 Mad. 151.
2 *Abdul Hamid*, (1886) 13 Cal. 349.
3 *Khandusingh*, (1896) 22 Bom. 768.
4 *Kotamaraju Venkatrayadu*, (1905) 28 Mad. 90,
5 *Causley*, (1915) 43 Cal. 421.

been taken out, and a new page with favourable remarks, purporting to have been written and signed by various superior officers of the Police, had been inserted in its place, the intent being to favour the chances of his promotion, it was held that this interpolation amounted to forgery, but that inasmuch as it was not proved that the Constable himself prepared and inserted the false page, he was rightly convicted of abetment only[1].

Clause second.—This clause requires dishonest or fraudulent cancellation or alteration of a document in any material part without lawful authority after it has been made or executed by a person who may be living or dead.

Where the date in a bond was altered, even though the alteration was not required to bring the claim within limitation[2], or the document was not necessary for the case of the party using it[3], this offence was held to have been committed. But where the vendees of a plot of land altered the number of which the land was described in the deed of sale, because such number was not the right number, and used it as evidence in a suit, the alteration of the deed was held not to amount to forgery as the intention to cause wrongful loss or wrongful gain or to defraud being wanting[4]. Similarly, where the date of a document, which would otherwise not have been presented for registration within time, was altered for the purpose of getting it registered, the offence committed was held to be not forgery but fabricating false evidence under s. 192[5].

The alteration must be in a material part of the document. Thus the interpolation of the name of a person as an attesting witness to a document not required by law to be attested subsequent to its execution and registration is not an alteration of the document in a material part[6].

Clause third.—This clause deals with cases where the person making the document is not supposed to know its contents owing to unsoundness of mind or intoxication or deception.

Where the accused obtained a genuine signature upon a false document, by inserting the document in a heap of papers placed for signature before the person signing it, it was held that the accused had not committed an offence under this section on the ground that no deception was practised on the person signing it to prevent him from knowing the nature of the document[7].

Explanation 1.—There may be a sufficient falsity in a man's merely signing his own name, if he do this in order that it may be mistaken for the signature of another person of the same name. If a bill of exchange payable to A or order, get into the hands of another person of the same name as the

1 *Muhammad Saeed Khan*, (1898) 21 All. 113.
2 *Ram Narain*, (1881) P. R. No. 14 of 1881.
3 *Daya Ram*, (1885) P. R. No. 16 of 1885.
4 *Fateh*, (1882) 5 All. 217.
5 *Mir Ekrar Ali*, (1880) 6 Cal. 482.
6 *Surendra Nath Ghosh*, (1910) 14 C. W. N. 1076.
7 *Nujeebutoollah*, (1868) 9 W. R. 20.

payee, and such person, knowing that he was not the real person in whose favour it was drawn, endorses it, he is guilty of forgery[1].

Explanation 2.—As to the charge of forgery it is wholly immaterial whether the name forged is that of a fictitious person who never existed or of a real person. It is as much a forgery in the one case as in the other provided the fictitious name is assumed for the purpose of fraud in the particular case under trial....There is, however, no doubt that an intention to defraud is an essential ingredient; but it is sufficient to show that there was an intention to defraud generally. Whether there was an intention to defraud or not is a question of fact to be determined with reference to the special circumstances of each case[2].

Where the prisoner, Robert Martin, in payment for a pony and cart purchased by him from the prosecutor, drew a cheque in the name of William Martin in the presence of the prosecutor upon a bank at which he, the prisoner, had no account, and gave it to the prosecutor as his own cheque drawn in his own name, it was held that this amounted to cheating and not forgery[3]. If a person give a note or other security as his own note or security, and the credit thereupon be personal to himself without any relation to another, his signing such a note with a fictitious name may indeed be cheating but will not amount to forgery, for in that case it is really the instrument of the party whose act it purports to be, and the creditor had no other security in view. But if a person authorize another to sign a note in his name, dated at a particular place, and made payable at a banker's, and the person in whose name it is drawn represented it to be the name of *another* person with intent to defraud, and no such person as the note and the representation import exists, this is forgery[4]. Signing a bill in an assumed name is a forgery, if the name was assumed to defraud the person to whom such bill is given, though such person would equally have taken the bill had the prisoner used his real name[5].

Document made to conceal a previous dishonest or fraudulent, or negligent act.—The Calcutta High Court has laid down that if the intention with which a false document is made to conceal a fraudulent or dishonest act, which has been previously committed that intention cannot be other than an intention to commit fraud; and if the intention is to commit fraud, the making of a false document with that intention will come within the definition of forgery[6]. It has recently held that the making of false entries in a book or register by any person in order to conceal a previous fraudulent or dishonest act falls within the purview of s. 477-A inasmuch as the intention is to defraud[7]. The Madras High Court is of the same opinion. It has held that a debtor who forges a release to screen himself from liability to pay the debt cannot be said not to be guilty of forgery because he intended by the forgery to cover a dishonest purpose[8].

1 *Mead* v. *Young*, (1790) 4 T.R. 28.
2 *Pera Raju*, (1889) 13 Mad. 27, 31.
3 *Martin*, (1880) 5 Q. B. D. 34.
4 *Parkes & Brown*, (1796) 2 Leach 775.
5 *Francis*, (1811) R. & R. 209.
6 *Lolit Mohan Sarkar*, (1894) 22 Cal. 313, 321.
7 *Rash Behari Das*, (1908) 35 Cal. 450.
8 *Sabapati*, (1888) 11 Mad. 411.

But the Allahabad High Court has ruled that falsification of record made in order to conceal previous acts of fraud[1], or negligence[2], do not amount to forgery, as no one would be defrauded or injured by them. Following these decisions it has decided that a clerk who, after committing criminal breach of trust, makes false entries in an account book, with the intention of concealing such offence, does not commit forgery[3]. Similarly, where a public servant, in charge as such of certain documents, having been required to produce them, and being unable to do so, fabricated and produced similar documents with the intention of screening himself from punishment, the High Court held that such fabricated documents not having been made with the intent specified in s. 463 were not forgeries[4]. With respect to a charge under s. 465 the prisoner's immediate and more probable intention, and not his remoter and less probable intention, should be attributed to him. Where the intention is to conceal a fraud which has been previously committed, it is not the kind of intention which that section refers to[5].

The Bombay High Court has adopted the Calcutta view, viz., that a man who deliberately makes a false document with false signatures in order to shield and conceal an already perpetrated fraud is himself acting with intent to commit fraud[6].

Joint act.—If several persons combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals[7]. Each is a principal, though he does not know by whom the other parts are executed and though it is finished by one alone, in the absence of others[8]. Thus, the makers of the paper and plate respectively for the purpose of forging a note afterwards filled up by a third person, are principles in the forgery with that person[9].

Abetment.—A person taking an active part in the preparation of a document, but no part in the forgery of the names of the executant, does not commit forgery, but simply abets the offence[10]. To prepare in conjunction with others a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false decument, and to ask for information as to a fact to be inserted in such false document, do not constitute forgery, or an attempt to commit it, but would amount to abetment[11].

Forgery of record of Court or of Public register, etc.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by

1 *Jageshur Pershad*, (1873) 6 N. W. P. 56.
2 *Lal Gumul*, (1870) 2 N. W. P. 11.
3 *Jiwanand*, (1882) 5 All. 221, dissented from in *Rash Behari Das*, (1908) 35 Cal. 450.
4 *Mazhar Husain*, (1883) 5 All. 553.
5 *Girdhari Lal*, (1886 8 All. 653.
6 *Balkrishna*, (1913) 15 Bom. L. R. 708.
7 *Bingley*, (1821) R. & R. 446.
8 *Kirkwood*, (1831) 1 Mood. 304.
9 *Dade*, (1831) 1 Mood. 307,
10 *Kashi Nath Naek*, (1897) 25 Cal. 207.
11 *Padala Venkatasami*, (1881) 3 Mad. 4.

a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section applies to cases where a certificate or a document is forged by a person with a view to make it appear that it was duly issued by a public officer, e.g., forging a marriage certificate[1]. This section may be compared with s. 167.

Copy.—Where a person who is bound to give a true copy of any document gives true copy of such document, he cannot be convicted of the offence of forgery punishable under this section, merely because the original of which he gives a true copy contains a statement which is false, and is known or believed by him to be such. As the original was not forged by the person giving the copy he could not be convicted of forgery[2].

Fraudulent intent must only exist in the mind of the forgeror.—A person who, at the request of another sent to trap him, fabricates a document purporting to be a notice under the seal and signature of a Deputy Collector, he being informed that the notice was required by such other person for the purpose of being used in a pending suit (there being, however, in reality no such suit in existence) is guilty of forgery, it not being necessary that the intention of fraudulenty using the document should exist in the mind of any other person than the person fabricating the document[3].

Forgery of valuable security, will, &c.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with im-

1 *Juggun Lall*, (1880) 7 C.L.R. 356.

2 *Mariganda*, (1891) Cr. R. No. 42 of 1891, Unrep. Cr. C. 583.

3 *Haradhan Maiti*, (1887) 14 Cal. 513, F.B.

prisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The offence under this section is an aggravated form of the offence described in the last section. The forged document must be one of those mentioned in the section.

CASES.

An unregistered document, though not a valuable security until the registration is completed, still purports to be a valuable security within the meaning of this section[1]. But a *sunnud* conferring a title of dignity on a person is not a valuable security[2]. A blank paper, or a bond barred by limitation, is not a document of the kind described in the section[3]. But forgery may be committed of a promissory note on unstamped paper even though a statute prohibits the stamp to be affixed afterwards[4]. It is no objection to the charge of forgery that the instrument is not available by reason of some collateral objection not appearing upon the face of it[5].

The forging of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, will not authorise the delivery of moveable property, is not punishable under this section[6].

An agreement in writing, which purported to be entered into between five persons, was signed by only two of them; it was altered by the addition of some material terms by the accused who was one of the two executants without the consent or knowledge of the other executant and was not signed by the other parties to the agreement. The accused was in possession of the instrument which was altered by him. It was held that the accused was guilty of forgery of a valuable security under this section, or being in possession of a forged document under s. 474[7].

Forgery for purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section punishes forgery committed for the purpose of cheating, e.g., falsification of account books for deception[8], or forgery of a school attendance register for the purpose of obtaining a Government grant[9].

[1] *Kashi Nath Naek*, (1897) 25 Cal. 207; *Ramasami*, (1888) 12 Mad. 148.
[2] *Jan Mahomed*, (1884) 10 Cal. 584.
[3] *Rughoonundun Puttronuvees*, (1871) 15 W. R. 19.
[4] *Morton*, (1795) 2 East P. C. 955.
[5] *M'Intosh*, (1800) 2 East 956.
[6] *Naro Gopal*, (1868) 5 B. H. C. (Cr. C.) 56.
[7] *Ramaswami Ayyar*, (1917) 41 Mad. 589.
[8] *Banessur Biswas*, (1872) 18 W. R. 46.
[9] *Kuppana Pillai*, (1885) Weir, (3rd Edn.) 336.

Forgery for purpose of harming reputation.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.

A person who forges a document for the purpose of harming the reputation of another commits an offence under this section and also under s. 500 (defamation).

Forged document.

470. A false document made wholly or in part by forgery is designated "a forged document."

Using as genuine a forged document.

471. Whoever fraudulently or dishonestly uses as genuine[1] any document which he knows or has reason to believe to be a forged document[2], shall be punished in the same manner as if he had forged such document.

COMMENT.

Under this section the dishonest user of a forged document is made punishable. It punishes a person for making use of a forged document.

Ingredients.—Under this section there must be —

1. Fraudulent or dishonest use of a document as genuine.
2. The person using it must have knowledge or reason to believe that the document is a forged one.

'Uses as genuine.'—The use of the document must be for one of the purposes mentioned in s. 463. Thus an involuntary production of a document in Court in obedience to an order to produce it is no use of it[1]. A mere statement that a document is genuine does not amount to using it as genuine[2]. The use of a forged document will be fraudulent and dishonest under this section, even though the document itself is unnecessary for the case of the party who uses it, and though, in fact, he has a perfectly good title without it[3]. The presentation of a forged document for registration, and obtaining registration, is using of that document[4]. But the Calcutta High Court has held that the mere filing of a document in Court without tender-

1 *The Assistant Sessions Judge of North Arcot* v. *Ramammal*, (1911) 36 Mad. 387.

2 *Muthiah Chetty*, (1911) 36 Mad. 392.

3 *Dhunum Kazee*, (1882) 9 Cal. 53.

4 *Azimooddeen*, (1869) 11 W.R. 15.

ing the same in evidence does not constitute user of it[1]. This decision has been dissented from by the Patna High Court. It has held that the filing of forged documents with a plaint is user of them within the meaning of this section[2].

2. 'Knows or has reason to believe to be a forged document.'—These words are of general application. The mere fact that a pleader's suspicions ought to have been aroused by the sight of a forged document, is not *prima facie* evidence that he knew, or had reason to believe, the document to be forged. A pleader is under no higher obligation than any other agent would be, and to justify his prosecution it should be shown that he had been a party to the concoction of the document, or that he had the knowledge that it was so concocted[3].

CASES.

Alteration in a receipt.—The creditors of a Police Constable applied to the District Superintendent of Police that Rs. 2 might be deducted monthly from the debtor's pay until the debt was satisfied. Upon an order being passed, directing that the deduction asked for should be made, the debtor produced a receipt purporting to be a receipt for Rs. 18, the whole amount due. It subsequently appeared that the receipt was one for Rs. 8, which the debtor had altered by adding the figure "1" so as to make it appear that the receipt was one for Rs. 18. It was held that the real intent in the prisoner's mind being to induce his superior officer to refrain from the illegal act, viz., the act of stopping a portion of his salary without a proper attachment by a Civil Court, it did not necessarily follow that he contemplated setting up the altered receipt to defeat his creditor's claim; and that, therefore, he had not committed an offence under this section[4].

Certificate.—Where the accused applied to a Superintendent of Police for employment in the Police force, and in support of his application presented two certificates which he knew to be false, it was held that the accused was guilty of offences under ss. 463-A and 471[5]. Where the accused used a forged certificate of competency as an engine room first tindal, he was held guilty under ss 471 and 463[6].

Plaint.—The accused gave his pleader a copy of a document which had been falsified by an interpolation being made in it for the purpose of its being used in the trial of his suit. It was held that he was guilty not of an attempt to commit an offence under s. 471, but of the offence itself[7].

Fabrication of receipts in lieu of genuine receipts is not forgery.—Where four forged receipts for the payment of rent were fabricated in lieu of genuine receipts which had been lost, it was held that the prisoner had not committed this offence as the false receipts were not made 'dishonestly' or 'fraudulently'[8]. This decision does not seem to be a sound one.

1 *Ambika Prasad Singh*, (1908) 35 Cal. 8 0.
2 *Idu Julah*, (1917) 3 P.L.J. 386.
3 *Ranchhoddas Nagardas*, (1896) 22 Bom. 317.
4 *Syed Hussain*, (1885) 7 All. 403.
5 *Khandusingh*, (1896) 22 Bom. 768.
6 *Abbas Ali*, (1896) 25 Cal. 512, F. B.
7 *Lala Ojha*, (1899) 26 Cal. 863.
8 *Sheo Dayal*, (1885) 7 All. 459.

Sunud.—The accused, in order to obtain a recognition from a Settlement Officer that they were entitled to the title of 'loskur', filed a *sunud* before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471 and 464. It was held that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty as their intention was not to cause wrongful gain or wrongful loss to any one, but only to produce a false belief in the mind of the Settlement Officer that they were entitled to the dignity of 'loskur,' and that this could not be said to constitute an intention to defraud[1].

Copy.—Where a person took copies of a forged document and put those copies forward as evidence in support of title, it was held that this was a use by him of the forged document[2].

Making or possessing counterfeit seal, &c., with intent to commit forgery punishable under section 467.

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section and the section following are akin to ss. 235, 255 and 256.

Making or possessing counterfeit seal, &c., with intent to commit forgery punishable otherwise.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[1] *Jan Mahomed*, (1884) 10 Cal. 584. [2] *Mulai Singh*, (1906) 28 All. 402.

Having possession of document described in s. 466 or 467, knowing it to be forged and intending to use it as genuine.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and, if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section resembles ss. 242, 243 and 259.

Counterfeiting device or mark used for authenticating document described in section 467, or possessing counterfeit marked material.

475. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

The commencement of the forgery of bank-notes and other similar securities, where it has proceeded to the length which is described in this section, is treated as a substantive offence and punished. This section supplements the provisions of s. 472.

476. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of

Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

authenticating any document other than the documents described insection 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section is similar to the last section, but as the document, the counterfeit of which is made punishable, is not of so much importance as in the last. the punishment is not so severe.

Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.

This section applies when the document tampered with or destroyed is either a will or an authority to adopt or a valuable security. Owing to the great importance of documents of this kind the punishment provided is severe.

Falsification of accounts.

477-A. Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which

belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum or money intended to be the subject of the fraud, or any particular day on which the offence was committed.

COMMENT.

This section makes the falsification of books and accounts punishable even though there is no evidence to prove misappropriation of any specific sum on any particular occasion.

Ingredients.—This section requires the following essentials :—

1. The person coming within its purview must be a clerk, an officer or a servant, or acting in the capacity of a clerk, an officer or a servant.

2. He must wilfully and with intent to defraud—

(i) destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which

(*a*) belongs to or is in the possession of his employer; or

(*b*) has been received by him for or on behalf of his employer, or

(ii) make or abet the making of any false entry in, or omit or alter or abet the omission or alteration of any material particular from or in any such book, paper, writing, valuable security or account.

The making of false entries in a book or register by any person in order to conceal a previous fraudulent or dishonest act falls within the purview of this section. Certain sums of money were received by the accused for payment into Government Treasury but he did not enter the sums in the register. After the commencement of enquiry into the matter he made false entries in the register showing that those sums had been paid. It was held that he was guilty under this section[1]. In a Calcutta case it was held that the alteration of accounts so as to show the receipt of a sum of money crimi-

1 *Rash Behari Das*, (1908) 35 Cal. 450 ; *Jiwanand*, (1882) 5 All. 221 ; *Girdhari Lal*, (1886) 8 All. 653 ; and *Abdul Hamid*, (1886) 13 Cal. 349, dissented from.

nally misappropriated and in order to remove evidence of such misappropriation was not an offence under this section there being no intent to commit fraud. The accused, a Post Master, despatched to a person four sacks of waste paper forms of the Post Office and appropriated the proceeds of the sale. As an enquiry was set on foot he, with the help of the Treasurer, changed the accounts to cover his failure to credit the proceeds of the sale. The Post Master was convicted under ss. 409, 465, 471 and 477-A. It was held that the conviction under ss. 465 and 477-A was wrong as there was no intent to commit fraud[1].

Of Trade, Property and other Marks.

Trade Mark.

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark,

and for the purposes of this Code the expression "trade mark" includes any trade mark which is registered in the register of trade marks kept under the Patents, Designs and Trade Marks Act, 1883, and any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable.

Property mark.

479. A mark used for denoting that moveable property belongs to a particular person is called a property mark.

COMMENT.

The distinction between 'trade-mark' and 'property-mark' is not recognised in English law.

Using a false trade mark.

480. Whoever marks any goods or any case, package or other receptacle containing goods or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed[1] that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

[1] *Jyotish Chandra Mukerjee*, (1909) 36 Cal. 955.

COMMENT.

This section defines the offence of using a false trade-mark.

Property in a trade-mark is the right to the exclusive use of some mark, name, or symbol in connection with a particular manufacture, or vendible commodity; consequently, the use of the same mark in connection with a different article is not an infringement of such right of property. If, therefore, the trade mark contains in itself a clear and distinct description of the commodity to which it is affixed, it is not pirated by the use of a mark which, although in other respects is similar, does not contain or give the same description, and which is impressed upon an article which is not of the nature or quality so described[1]. There can be no right to the exclusive ownership of any symbols or marks universally in the abstract. Thus, an iron founder who has a particular mark for his manufactures in iron could not restrain the use of the same mark when impressed on cotton or woollen goods; for a trade-mark consists in the exclusive right to the use of some name or symbol as applied to a particular manufacture or vendible commodity[2].

A distinctive mark may be adopted by a person who is not the manufacturer but the importer of goods, and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him[3].

Ingredients.—This section has two essentials:—

1. Marking any goods or any case, package, or receptacle containing goods; or using any case, package or receptacle with any mark thereon.

2. Such marking or using must be in a manner reasonably calculated to cause it to be believed that the goods so marked or the goods in the marked receptacle are the manufacture or merchandise of a person whose manufacture or merchandise they are not.

?. **'In a manner reasonably calculated to cause it to be believed.'**—The test of the infringement of a trade-mark is whether the acts alleged as an infringement are likely to mislead the public into dealing with the alleged infringer under the belief that they are dealing with a person who first used the mark[4]. How is this to be tested? Lord Herschell says: "The eye must be the Judge in such a case as this, and...the question must be determined by placing the designs side by side, and asking whether they are the same, or whether the one is an obvious imitation of the other[5]." Mere differences in detail do not prevent two designs being essentially the same[6].

The general resemblance or get-up, irrespective of the circumstance that the registered trade-mark is different, does amount to counterfeiting a trade-mark[7].

[1] *Leather Cloth Co.* v. *American Leather Cloth Co.*, (1865) 11 H.L.C. 523.

[2] *Hall* v. *Barrows*, (1863) 33 L. J. Ch. 204.

[3] *Latif*, (1916) 39 All. 123.

[4] *Hecla Foundry Co.* v. *Walker Hunter & Co.*, (1889) 14 App. Cas. 550, 555.

[5] *Hecla Foundry Co.* v. *Walker Hunter & Co.*, (1889) 14 App. Cas. 550, 555.

[6] *John Harper & Co.* v. *Wright & Butler, &c., Ltd.*, [1896] 1 Ch. 142, 147, *Ibid*, p. 147.

[7] *Ganpat Sitaram Mukadam*, (1914) 16 Bom. L. R. 78.

Using a false property mark.

481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

COMMENT.

This section defines the offence of using a false property mark.

A property mark is intended to denote ownership over all moveable property belonging to a person whether it is all of one kind or of different kinds. So long as the person owns moveable properties, his property mark impressed upon them remains his, though any particular article out of it may after such impression pass out of his hands and cease to be his[1].

The function of a property mark to denote certain ownership is not destroyed because any particular property on which it was impressed has ceased to be of that ownership.

Ingredients.—This section requires two essentials :—

1. Marking any moveable property or goods or any case, package or receptacle containing goods ; or using any case, package or receptacle with any mark thereon.

2. Such marking or using must be in a manner reasonably calculated to cause it to be believed that the property or goods so marked or the property or goods contained in such receptacle belonged to the person to whom they did not belong.

Trade mark and property mark.—The term "property mark" is one unknown to English law, and the description of its wrongful use as given in s. 481 would, in most cases, if not in every possible case, be within the scope of English law, viewing the wrong either as a crime or a civil injury. The distinction in the Penal Code between 'a trade mark' and a 'property mark' is, that the former denotes the manufacture or quality of the goods to which it is attached and the latter denotes the ownership of them ; or more briefly, the former concerns the goods themselves, the latter, the proprietor of them.

Punishment for using a false trade mark or property mark.

482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

1 *Dahyabhai Chakasha*, (1904) 6 Bom. L. R. 513

COMMENT.

If the maker of an article puts on it the trade mark of another and he does this with the intention that purchasers may be induced to believe that the article was made by such other maker, he commits this offence. Superiority of the article will be no defence.

483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a trade mark or property mark used by another.

484. Whoever counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Counterfeiting a mark used by a public servant.

COMMENT.

The offence under this section is an aggravated form of the offence described in the preceding one. An enhanced punishment is inflicted where the property-mark used by a public servant is counterfeited

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making or possession of any instrument for counterfeiting a trade mark or property mark.

COMMENT.

This section resembles ss. 235, 256 and 472. The making or possession of instruments for counterfeiting a trade mark or a property mark is hereby punished.

Selling goods marked with a counterfeit trademark or property mark.

486. Whoever sells, or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

This section saves from punishment persons dealing with goods bearing false trade marks if they are able to prove that after taking reasonable precautions they had no ground to suspect the genuineness of the mark, and they gave all the information in their power as to the source from which the goods were obtained or that otherwise they had acted innocently in the matter. A general resemblance constitutes infringement. A person who employs a label which in general resembles the label used by another manufacturer is guilty of counterfeiting the trade-mark[1].

K, a merchant of Calcutta, ordered certain goods from Europe, but refused to take delivery of the consignment on its arrival in Calcutta. The goods were thereupon sold in the Market with the labels of the firm of K attached thereto, and were purchased by M, a dealer in piece-goods. M sold the goods without removing the labels of K and was convicted under this section for selling the goods with a false trade mark. It was held that no

[1] *Ganpat Sitaram Mukadam*, (1914) 16 Bom. L. R. 78.

offence was committed by M either under s. 482 or s. 486 as the trade mark was neither false nor counterfeit[1].

Making a false mark upon any receptacle containing goods.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.

This section is more comprehensive than ss. 482 and 486. The fraudulent making of false marks of any description on goods for the purpose of deceiving public servants, such as custom officers, is punishable under this section.

Punishment for making use of any such false mark.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

COMMENT.

This section punishes the making use of a false mark. The preceding section punishes the making of such a mark.

Tampering with property mark with intent to cause injury.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.

This section punishes the tampering with a property mark. Criminal intention or knowledge on the part of the accused is necessary.

[1] *Motilal Premsuk* v. *Kanhai Lal Dass*, (1905) 32 Cal. 969.

Of Currency-notes and Bank-notes.

489-A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting currency notes or bank-notes.

Explanation.—For the purposes of this section and of sections 489-B, 489-C and 489-D the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

COMMENT.

Sections 489-A, 489-B, 489 C and 489-D were introduced in order to provide more adequately for the protection of currency-notes and bank-notes from forgery. Under the Indian Penal Code, which was passed prior to the existence of a paper currency in India, currency-notes were not protected by any special provisions, but merely by the general provisions, applying to the forgery of valuable securities. Before those sections were introduced charges for forging currency-notes had to be preferred under s. 467, for uttering them under s. 471, and for making or possessing counterfeit plates under s. 472. The provisions of s. 467 afforded sufficient means for dealing both with forgery generally and with forgery of currency-notes. But it was at times difficult to obtain a conviction under the other sections.

This section is similar to ss. 231 and 255.

489-B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Using as genuine forged or counterfeit currency-notes or bank-notes.

COMMENT.

This section resembles ss. 239, 241 and 258. It provides against trafficking in forged or counterfeit notes.

489-C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Possession of forged or counterfeit currency-notes or banknotes.

COMMENT.

This section resembles ss. 242, 243 and 257. It deals with the mere possession of a forged or counterfeit currency-note or bank note.

489-D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

COMMENT.

This section is analogous to ss. 233, 234, 256, 257 and 485.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

The Authors of the Code observe: "We agree with the great body of jurists in thinking that in general a mere breach of contract ought not to be an offence, but only to be the subject of a civil action.

"To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal legislation[1]."

[1] Note P.

490. Whoever, being bound by a lawful contract[1] to render his personal service[2] in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey[3], or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Breach of contract of service during voyage or journey.

ILLUSTRATIONS.

(*a*) A, a palanquin-bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*b*) A, a cooly being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(*c*) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(*d*) A, by unlawful means, compels B, a cooly, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly by the person who is to perform the service.

ILLUSTRATION.

A contracts with a dak company to drive his carriage for a month. B employs the dak company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

COMMENT.

Object.—The Authors of the Code observe :—"In England it would be unnecessary to provide a punishment for a stage-coachman who should, however maliciously or dishonestly, drive on, leaving behind a passenger whom he is bound to carry. The evil inflicted is seldom very serious ; the country is everywhere well inhabited ; the roads are secure. The means of

conveyance can easily be obtained, and damages sufficient to compensate for any inconvenience or expense which may have been suffered can easily be recovered from the coach proprietors. But the mode of performing journeys and the state of society in this country are widely different. It is often necessary for travellers of the upper classes, even for English ladies, ignorant perhaps of the native languages, and with young children at their breasts, to perform journeys of many miles over uninhabited wastes and through jungles in which it is dangerous to linger for a moment, in palanquins borne by persons of the lowest class. If, as sometimes happens, these persons should, in a solitary place, set down the palanquin and run away, it is difficult to conceive a more distressing situation than that in which their employer would be left. None but very high damages would be any reparation for such a wrong. But the class of people by whom alone such a wrong is at all likely to be committed can pay no damages. The whole property of all the delinquents would probably not cover the expense of prosecuting them civilly. It therefore appears to us that breaches of contract of this description may, with strict propriety, be treated as crimes[1]."

Scope.—The section does not apply to a servant hired by the month or from day to day and under a continuous implied contract to serve until the engagement is terminated. The first branch of the section clearly points at a specific contract to convey or conduct in accordance with the terms of the special contract for one particular act of hiring and conducting.

Ingredients.—This section requires the following essentials:—

1. Binding of a person by a lawful contract.
2. Such contract must be to render personal service—
   (a) in conveying or conducting any person or property from one place to another ; or
   (b) to act as servant to any person during a voyage or journey ; or
   (c) to guard any person or property during a voyage or journey.
3. The person must have voluntarily omitted to render such service except in the case of illness or ill-treatment.

1. 'Lawful contract.'—A contract is lawful if it is enforceable by law.

2. 'Personal service.'—The contract should be of personal service. Where a carter contracted to convey the complainant's coal from one place to another ; and also for two years to convey his coal generally from whence he pleased to where he pleased, the carter not agreeing to convey, but to "cause" it to be conveyed, it was held that the contract did not come within the terms of this section[2]. Where the accused made a contract with the complainant to convey paddy in his (accused's) boat and failed to do so, whereupon he was convicted under the section, it was held that the conviction must be quashed on the ground that there was no contract for the personal service of the accused[3]. A domestic servant who was engaged on a

[1] Note P.

[2] *Sage v. Nirunjun Chatterjee*, (1863) 2 W. R. 12.

[3] *Vithu*, (1892) Cr. R. No. 25 of 1892, Unrep. Cr. C. 608.

monthly salary but who escaped afterwards was held not punishable under this section[1].

3. **'Voyage or journey.'**—These words apply to, and must be read with, the whole section; hence, an agreement for personal service in conveying indigo, from the fields to the vats, is not a contract contemplated by this section[2].

The contract, under the section, must be one to take particular goods or a particular load of goods from one specified point to another. The section does not apply to a contract to go from one place to another, in order at the latter to give the use of a cart at a particular rate of remuneration for a particular purpose[3].

Breach of contract to attend on and supply wants of helpless person.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

COMMENT.

Object.—The authors of the Code say: "We also think that persons who contract to take care of infants, of the sick and of the helpless, lay themselves under an obligation of a very peculiar kind, and may with propriety be punished if they omit to discharge their duty. The misery and distress which their neglect may cause is such as the largest pecuniary payment would not repair; they generally come from the lower ranks of life, and would be unable to pay anything. We, therefore, propose to add to this class of contracts the sanction of the penal law"[4].

Ingredients.—This section requires:—

1. Binding of a person by lawful contract.

2. Such contract must be to attend on or to supply the wants of a person who is helpless or incapable of providing for his own safety or of supplying his own wants by reason of

(i) youth; or

(ii) unsoundness of mind; or

(iii) disease; or

(iv) bodily weakness.

1 *Virasami*, (1884) 1 Weir 560.

2 *Nowa Tewaree*, (1866) 6 W R. 80.

3 *Keshav Ramchandra* (1887) Cr. R. No. 39 of 1887, Unrep. Cr. C. 349.

4 Note P.

3. Voluntary omission to perform the contract by the person bound by it.

Under this section it is not the breach of contract towards the other party to the contract that is to be regarded, but the breach of the legal obligation towards the incapable person, which has been accepted and transferred by the contract.

Ordinary servants do not come within the purview of this section.—The accused, a cook, on a morning whilst the complainant's wife was ill and unable to supply her own wants, left his service without warning or permission. It was alleged that the illness of the complainant's wife was aggravated thereby. It was held that the accused was engaged only as an ordinary cook to a family, and was not bound to attend on, or to supply the wants of, any helpless person, and that, therefore, this section did not apply to such a case.[1]

Breach of contract to serve at distant place to which servant is conveyed at master's expense.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman or labourer[1], for a period not more than three years, at any place within British India to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him or neglected to perform the contract on his part.

COMMENT.

This section renders artificers and labourers, who are bound by written contracts of service to serve their masters in distant places to which they are conveyed or intended to be conveyed at their master's expense, criminally liable for breach of contract. This section corresponds to s. 1 of the Workmen's Breach of Contract Act (XIII of 1859).

Ingredients.—This section requires the following essentials :—

1. Binding of a person by a lawful contract in writing.

2. Such contract must be to work for another person as an artificer, workman, or labourer, for a period not more than three years, at a place in British India to which by virtue of the contract he has been conveyed at the expense of the other.

1 *Solomon,* (1887) Cr. R. No. 43 of 1887, Unrep. Cr. C. 354.

3. The person bound by the contract voluntarily deserting the service or refusing to work without reasonable cause during the contractual period.

2. **'Work for another as an artificer, workman or labourer etc.**—An "artificer" is a skilled workman[1]. He must be a person who is to have the personal performance of some work for which he is to be paid wages, and this must be with reference to the original contract or obligation[2].

The terms 'artificer' 'workman' and 'labourer' have reference only to those occupations in which manual labour is an essential element, and they do not apply to contracts to serve as an actor in a theatrical company.

A 'labourer' is a man who digs and does other work of that kind with his hands.*

Every kind of toil is labour, but the word labourer is not used to denote every one who has to undergo labour of some kind, mental or physical, but only one who does physical labour of a certain kind[3].

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

This section punishes a man either married or unmarried who induces a woman to become, as she thinks, his wife, but in reality his concubine. The form of the marriage ceremony depends on the race or religion to which the persons entering into the marriage belongs. When races are mixed as in India, and religion may be changed or dissembled, this offence may be committed by a person falsely causing a woman to believe that he is of the same race or creed as herself and thus inducing her to contract a marriage, in reality unlawful, but which, according to the law under which she lives, is valid[4].

The offence under this section may also be punished as rape under s. 375, cl. (4).

Ingredients.—The section contains two ingredients.—

[1] *Morgan* v. *L. G. O. Co.*, (1884) 13 Q. B. D. 832.

[2] *Sharman* v. *Sanders*, (1853) 22 L. J. C. P. 86, 89.

[3] *Imam-ud-din* v. *Hurma jee*, (1904) P. R. No. 28 of 1904.

[4] M. & M. 32.

(1) The deceit that causes a false belief in the existence of a lawful marriage:

(2) Co-habitation or sexual intercourse with the person causing such belief.

Marrying again during life-time of husband or wife.

494. Whoever, having a husband or wife living, marries[1] in any case in which such marriage is void by reason of its taking place during the life of such husband or wife[2], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception [3].—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction;

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

COMMENT.

This section punishes the offence known to the English law as bigamy.

Scope.—The section does not apply to Hindu or Mahomedan males, who are allowed to marry more than one wife but it applies to Hindu or Mahomedan females, and to Christians[1] and Parsis[2] of either sex.

Ingredients.—This section requires :—

1. Existence of the first wife or husband when the second marriage is celebrated.

2. The second marriage being void by reason of the subsistence of the first according to the law applicable to the person violating the provisions of the section.

1. 'Having a husband or wife living, marries, &c.'—The validity of a marriage in the case of Hindus, Mahomedans, Jews, Budhists, Sikhs and Jains, will be determined in accordance with their religious usages. In the case of Native Christians by Act XV of 1872, in the case of the Parsis, by Act XV of 1865, and in the case of Brahmos, by Act III of 1872.

[1] Act XV of 1872. [2] Act XV of 1865.

If the first marriage is not a valid marriage, no offence is committed by contracting a second marriage. For instance, if A marries B, a person within prohibited degrees of affinity, and during B's life-time marries C, A does not commit bigamy[1].

A woman marrying within the period of her *iddat* is not guilty of bigamy[2].

Divorce dissolves a valid marriage, and the parties obtaining such dissolution can re-marry. Divorce is unknown to Hindu law, though it is practised among the lower classes. It is recognised among the Mahomedans, the Parsis, and the Native Christians.

Mahomedan law allows a person to repudiate his or her marriage on attaining puberty.—Under the Mahomedan law, when a child is given in marriage by any person other than the father or grandfather, he or she has the option of either ratifying it or repudiating it on attaining puberty. Under the Shiah law such a marriage is of no effect, and produces no legal consequences until it has been ratified by the minor upon his or her attaining majority. The only difference between the Sunni and the Shiah law on the question of option of puberty is that whereas according to the latter school a marriage contracted for a minor by a person other than the father or grandfather is wholly ineffective until it is ratified by the minor on attaining puberty, according to the Sunni school it continues effective until it is cancelled by the minor. Both schools give to the minor an absolute power either to ratify or to cancel the unauthorised marriage. The Sunni law presumes ratification when the girl after attaining the age of puberty has remained silent and has allowed the husband to consummate the marriage[3]. B, a Mahomedan girl, whose father was dead, was alleged to have been given in marriage by her mother to J, some years before she attained puberty. Prior to her attaining puberty, J was sentenced to a term of imprisonment for theft. While he was in jail, B, after she had attained puberty, contracted a marriage with P. The marriage with J was never consummated. On J being released from jail, he proceeded to prosecute B and P for bigamy and abetment of bigamy, and also charged P with adultery. It was held that B and P had not committed any offence, because assuming that B was properly married to J by B's mother when B was a child, B had the option of either ratifying or repudiating such marriage on attaining puberty[4].

2. 'Marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife.'—Where a person already bound by an existing marriage goes through with another person a form of marriage, known to and recognised by the law as capable of producing a valid marriage such person is guilty of bigamy.

The Bombay High Court has ruled that Courts of law will not recognize the authority of a caste to declare a marriage void, or to give permission to

1 *Chadwick*, (1847) 11 Q. B. 173, 281.

2 Per Holmwood, J., in *Abdul Ghani* v. *Azizul Huq*, (1911) 39 Cal. 409.

3 Per Ameer Ali, J., in *Badal Aurat*, (1891) 19 Cal. 79, 82.

4 *Badal Aurat*, (1831) 19 Cal. 79.

a woman to re-marry. *Bona fide* belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge of marrying again during the life-time of the first husband[1]. A custom of the Talpada Koli caste that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage with another man during the life-time of her first husband, and without his consent, was held to be invalid as being entirely opposed to the spirit of the Hindu law. Such marriage was "void by reason of its taking place during the life of such husband" and therefore punishable, as regards the woman, under this section[2].

The Calcutta High Court has, however, upheld a caste custom which allowed a wife to undergo second marriage after she was relinquished by her husband[3]. Evidence of any such custom should be allowed by Courts[4]. In *Umi's case*[5] the Bombay High Court did recognise the custom of a caste which allowed a husband for sufficient reason to divorce his wife. In this case a member of the Ajanya Rajput Gujar caste executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, that in that caste a husband was for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under this section.

Conversion from Hinduism.—According to Hindu law an apostate is not absolved from all civil obligations; the matrimonial bond remains indissoluble. A non-Christian marriage is not dissolved by the mere fact of the conversion of one or both of the parties to Christianity[6]. Hindu law does not recognize polygamous marriage by a woman. A Hindu woman who having a Hindu husband living marries a Mahomedan[7] or a Christian[8] even after becoming a Mahomedan or a Christian, commits bigamy. A Hindu husband under similar circumstances commits no offence as Hindu law recognizes the right of a husband to contract a valid second marriage notwithstanding the continuance of a former marriage.

Conversion from Christianity.—The Madras High Court once held that a Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman cannot be convicted of bigamy on the ground that he has another wife living whom he married while a professed Christian[9]. It was so held

1 *Sambhu Raghu*, (1876) 1 Bom. 347. See *Sankaralingam Chetti* v. *Subban Chetti*, (1894) 17 Mad. 479, where it is decided that there is nothing immoral in a caste custom by which divorce and re-marriage are permissible on mutual agreement, on one party paying to the other the expenses of the latter's original marriage.

2 *Bai Rupa*, (1864) 2 B. H. C. Cr. C. 117; *Bai Ganga*, (1916) 19 Bom. L. R. 56.

3 *Jukni*, (1892) 19 Cal. 627.

4 *Tholasingam*, (1896) 1 Weir 568.

5 (1882) 6 Bom. 126.

6 *Ram Kumari*, (1891) 18 Cal. 264; *Mussumat Gholam Fatima*, (1870) P. R. No. 32 of 1870; *Mussumat Kuri*, (1918) P. R. No. 5 of 1919.

7 *Govt. of Bombay* v. *Ganga*, (1880) 4 Bom. 330; *Gobardhan Dass* v. *Jasadamoni Dassi*, (1891) 18 Cal. 252. Such a marriage can only be dissolved under the provisions of the Indian Divorce Act (IV of 1869).

8 *Millard*, (1887) 10 Mad. 218.

9 (1866) 3 M. H. C. App. 7; *Michael*, (1880) 1 Weir 563.

on the ground that the Hindu law allowed polygamy on the part of a husband. But in a subsequent case the same High Court has doubted the correctness of this ruling. A Native Christian, having a Christian wife living, married a Hindu woman according to Hindu rites without renouncing his religion. The Court held that he was guilty of bigamy and expressed an opinion that it would have made no difference even if he had renounced Christian religion before contracting the second marriage[1]. Similarly, a Christian cannot by embracing Mahomedanism marry a second time during the life-time of his first wife[2]. A Christian woman, who had married a Christian according to Christian rites and during the life-time of her husband had become a Mahomedan and married a Mahomedan according to Mahomedan rites was held to have committed bigamy[3]. Whether a change of his religion, made honestly after marriage with the assent of both spouses without any intent to commit a fraud upon the law, will have the effect of altering the rights incidental to the marriage, such as that of divorce, is a question of importance and of nicety not decided as yet[4].

3. **Exception.**—The exception lays down three conditions:—

1. Continual absence of one of the parties for the space of seven years:
2. The absent spouse not having been heard of by the other party as being alive within that time; and
3. The party marrying must inform the person with whom he or she marries of the above fact.

1. **'Continually absent from such person for the space of seven years.'**—If the second marriage take place within seven years under a *bona fide* belief based on reasonable grounds that the former consort is dead, no offence is committed[5].

2. **'Shall not have been heard of by such person as being alive within that time.'**—When it is proved that the prisoner and his first wife have lived apart for seven years preceding the second marriage, it is incumbent on the prosecution to shew that during that time he was aware of her existence; and, in the absence of such proof, the prisoner is entitled to be acquitted[6] But it has been held that a woman who, having the means of acquiring knowledge of the fact of the death of her first husband, does not choose to make use of them, commits bigamy[7].

3. **'Inform the person with whom such marriage is contracted.'**—If the second marriage is contracted within seven years, it is incumbent on the person contracting to inform the other party about the first marriage[8].

Priest officiating at a bigamous marriage.—The priest who officiates at a bigamous marriage is an abettor under ss. 494 and 109[9].

1 *Lazar*, (1907) 30 Mad. 550.
2 *Skinner* v. *Orde*, (1871) 14 M. I. A. 309, 324.
3 *Mussamat Ruri*, (1918) P. R. No. 5 of 1919.
4 *Skinner* v. *Skinner*, (1897) 25 Cal. 537, 546, P. C.
5 *Tolson*, (1889) 23 Q. B. D. 168.
6 *John Curgerwen*, (1865) L. R. 1 C. C. R. 1.
7 *Enai Beebee*, (1865) 4 W. R. 25; *Mussammat Muhammad Nissa*, (1899) P. R. No. 1 of 1900.
8 *Enai Beebee*, *sup.*
9 *Umi*, (1882) 6 Bom. 126; *Millard*, (1887) 10 Mad. 218.

Persons present at a bigamous marriage.—Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage[1].

Abetment.—A man may be guilty of abetment, although the girl herself may be, from want of intelligence or knowledge, incapable of committing this offence[2].

CASES.

Absence for seven years.—When the prisoner's first wife had left him for sixteen years, and it was proved by the second wife that she had known him for nine years living as a single man, and that she had never heard of the first wife, who, it appeared, had been living seventeen miles from where the prisoner resided, it was held that the prisoner ought to be acquitted[3].

In 1864 W married A. In 1868 he was charged with bigamy in marrying B, his wife A being then alive, and was convicted. In 1876 he married C, and in 1880, C being then alive, he married D. Afterwards, upon a charge of bigamy in marrying D, C being then alive, W was convicted. It being held by the presiding judge that there was no evidence that A was alive when W married C, or that the marriage with C was invalid by reason of A being alive. It was held that the conviction could not be sustained, as the question should have been left to the jury whether upon the above fact A was alive or not when W married C[4].

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.

The offence under this section is an aggravated form of the offence defined in s. 494.

The Authors of the Code observe : "The act which, in the English law, is designated as bigamy is always an immoral act. But it may be one of the most serious crimes that can be committed. It may be attended with circumstances which may excuse though they cannot justify it. The married man who, by passing himself off as unmarried, induces a modest woman to become, as she thinks, his wife, but in reality his concubine and the mother of an illegitimate issue, is guilty of one of the most cruel frauds that can be conceived. Such a man we would punish with exemplary seve-

1 *Umi*, (1882) 6 Bom. 126.
2 *Nand Lal*, (1902) 6 C. W. N. 343
3 *Jones*, (1842) C. & M. 614.
4 *Willshire*, (1880) 6 Q. B. D. 366.

rity. But suppose that a person arrives from England and pays attention to one of his country-women at Calcutta. She refuses to listen to him on any other terms than those of marriage. He candidly owns that he is already married. She still presses him to go through the ceremony with her. She represents to him that if they live together without being married she shall be an out-caste from society, that nobody in India knows that he has a wife, that he may very likely never fall in with his wife again, and that she is ready to take the risk. The lover accordingly agrees to go through the form of marriage. It cannot be disputed that there is an immense difference between these two cases[1]".

Marriage ceremony fraudulently gone through without lawful marriage.

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also by liable to fine.

COMMENT.

This section punishes fraudulent mock-marriages.

This section applies to cases in which a ceremony is gone through which would in no case constitute a marriage, and in which one of the parties is deceived by the other into the belief that it does constitute a marriage, or in which effect is sought to be given by the proceeding to some collateral fraudulent purpose. Where the ceremony gone through does, but for the previous marriage, constitute a valid marriage, and both parties are aware of the circumstances of the previous marriage, s. 494 applies[2].

Ingredients.—The section requires two essentials :—

1. Dishonestly or with a fraudulent intention going through the ceremony of marriage.

2. Knowledge on the part of the person going through the ceremony that he is not thereby lawfully married.

Sections 493 and 496.—The two sections are somewhat alike : the difference appears to be that under s. 493 deception is requisite on the part of the man, and co-habitation or sexual intercourse consequent on such deception. The offence under s. 496 requires no deception, co-habitation, or sexual intercourse as a *sine qua non*, but a dishonest or fraudulent abuse of the marriage ceremony. In the latter case the offence can be committed by a man or woman, in the former only by the man.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be

1 Note Q.

2 *Rama Sona*, (1873) Cr. R. July 1873, Unrep. Cr. C. 77.

Adultery.

the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

COMMENT.

The framers of the Code did not make adultery an offence punishable under the Code. But the Second Law Commission, after giving mature consideration to the subject, came to the conclusion that it was not advisable to exclude this offence from the Code. Adultery figures in the penal law of many nations, and some of the most celebrated English lawyers have considered its omission from the English law as a defect.

Ingredients.—The section requires the following essentials:—

1. Sexual intercourse by a man with a woman who is and whom he knows or has reason to believe to be the wife of another man.

2. Such sexual intercourse must be without the consent or connivance of the husband.

3. Such sexual intercourse must not amount to rape.

Scope.—The cognizance of this offence is limited to adultery committed with a married woman, and the male offender alone has been made liable to punishment. Thus, under the Code, adultery is an offence committed by a third person against a husband in respect of his wife. It is not committed by a man who has sexual intercourse with an unmarried woman, or with a widow, or even with a married woman whose husband consents to it.

It is not necessary that the adulterer should know whose wife the woman is, provided he knew she was a married woman[1]. A *nekai* wife is a wife within the meaning of this and the following section[2].

Why wife not punished as an abettor.—The authors of the Code observe: "Though we well know that the dearest interest of the human race are closely connected with the chastity of women and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country which may well lead a humane man to pause before he determines to punish the infidelity of wives. The condition of the women of this country is, unhappily, very different from that of the women of England and France; they are married while still children; they are often neglected for other wives while still young. They share the attentions of a husband with several rivals. To make laws for punishing the inconsistency of a wife, while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt. We

[1] *Madhub Chunder Giri*, (1873) 21 W. R. 13.

[2] (1865) 4 W. R. Cr. L. 1.

are not so visionary as to think of attacking, by law, an evil so deeply rooted in the manners of the people of this country as polygamy. We leave it to the slow, but we trust the certain, operation of education and of time. But while it exists, while it continues to produce its never-failing effects on the happiness and respectability of women, we are not inclined to throw into a a scale, already too much depressed, the additional weight of the penal law[1]."

The reasons given above for not punishing a wife as an abettor seem neither convincing nor satisfactory. It would be more consonant with Indian ideas if the woman also were punished for adultery. Manu has provided punishment for her in such cases.

Complaint by person aggrieved necessary.—No Court shall take cognizance of the offence except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed (Criminal Procedure Code, s. 199.)

Enticing or taking away or detaining with criminal intent a married woman.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

Sections 361 and 366 may be compared with this section which comes into operation when the two former sections fail to apply.

This and the preceding sections are evidently intended for the protection of husband, who alone can institute prosecutions for offences under them.

Ingredients.—The section requires two things :—

1. Taking or enticing away or concealing or detaining the wife of another man from that man or from any person having the care of her on behalf of that man.

2. Such taking, enticing, concealing or detaining must be with intent that she may have illicit intercourse with any person.

Sections 366 and 498.—The former applies to cases where, at the time of the abduction, the woman has no intention of marriage or illicit intercourse at the time when the abduction takes place, but it is the intention

[1] Note Q.

of the parson abducting to compel her afterwards to marry any person against her will, or to force or seduce her afterwards for illicit intercourse: the latter applies to cases where the object of the taking, or enticing, is that the woman may have illicit intercourse with some other person, even though as generally happens, she is quite aware of the purpose for which she is quitting her husband, and is an assenting party to it.

Again, an offence punishable under s. 498 is a minor offence as compared with an offence punishable under s. 366[1].

Wife cannot be punished as abettor.—In the case of adultery it is distinctly enacted that the wife is not punishable as an abetter. It is therefore inconsistent to punish her as an abettor of the minor offence mentioned in this section[2].

CHAPTER XXI.

OF DEFAMATION.

499. Whoever by words either spoken[1] or intended to be read, or by signs or by visible representations[2], makes or publishes any imputation[3] concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Defamation.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that per-

[1] *Jatra Shekh* v. *Reazat Shekh*, (892) 20 Cal. 483.

[2] *Phalla* v. *Jiwan*, (1871) P. R. No. 6 of 1871; *Mohun* v. *Gunsham*, (1871) P. R. No. 8 of 1871.

son in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

ILLUSTRATIONS.

(a) A says—"Z is an honest man; he never stole B's watch": intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

Imputation of truth which public good requires to be made or published.

First Exception.—It is not defamation to impute any thing which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Public conduct of public servants.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character so far as his character appears in that conduct, and no further.

ILLUSTRATION.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Publication of reports of proceedings of Courts.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Merits of case decided in Court or conduct of witnesses and others concerned.

ILLUSTRATIONS.

(*a*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b*) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Merits of public performance.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

ILLUSTRATIONS.

(*a*) A person who publishes a book, submits that book to the judgment of the public.

(*b*) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Censure passed in good faith by person having lawful authority over another.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

ILLUSTRATION.

A Judge censuring in good faith the conduct of a witness, or of an office of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children ; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service ; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to authorised person.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

ILLUSTRATIONS.

If A in good faith accuses Z before a Magistrate ; if A in good faith complains of the conduct of Z, a servant, to Z's master ; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception

Imputation made in good faith by person for protection of his or other's interests.

Ninth Exception—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

ILLUSTRATIONS.

(a) A, a shop-keeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Caution intended for good of person to whom conveyed or for public good.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Punishment for defamation.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

COMMENT.

The essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed[1].

According to English law the essence of the crime of private libel consists in its tendency to provoke breach of the peace. Under the Penal Code defamation has been made an offence without any reference to its tendency to cause acts of illegal violence. The gist of the offence is the mental suffering caused to the person defamed. Spoken words do not amount to a crime under the English law, but under the Code there is no distinction between a slander and a libel. Before the Indian Penal Code came into force defamation was merely considered as a civil wrong.

Ingredients.—The section requires three essentials :—

(1) Making or publishing any imputation concerning any person.

(2) Such imputation must have been made

(a) by words, either spoken or intended to be read ; or

(b) by signs ; or

(c) by visible representations.

(3) Such imputation must have been made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.

[1] Note R.

Making or publishing any imputation concerning any person.—Every one who composes, dictates, writes or in any way contributes to the making of a libel, is the maker of the libel.

If one dictates, and another writes, both are guilty of making it, for he shows his approbation of what is written. So, if one repeats, another writes a libel, and a third approves what is written, they are all makers of it as all who concur and assent to the doing of an unlawful act are guilty; and murdering a man's reputation by a libel may be compared to murdering a man's person, in which all who are present and encourage the act are guilty, though the wound was given by one only[1].

'Publishes'—The defamatory matter must be published, that is, communicated to some person other than the person to whom it is addressed *e. g.*, dictating a letter to the writer of it is publication[2]. But where there is a duty which forms the ground of privileged occasion the person exercising the privilege may communicate matters to third persons in the ordinary course of business. A solicitor who dictates to his clerk a letter containing defamatory statements regarding a person is not liable for defamation[3].

Communicating defamatory matter only to the person defamed is not publication[4]. The action of a person who sent to a public officer by post, in a closed cover, a notice containing imputations on the character of the recipient, but which was not communicated by the accused to any third person, was held to be not such a 'making' or 'publishing' of the matter complained of as to constitute this offence[5].

According to the English law defamatory matter, even if published only to the person defamed, will support an indictment provided it is likely to provoke a breach of the peace[6]. This view of the English law is met by s. 504 of the Code.

Defamatory matter written on a post card[7] or printed on papers distributed broad-cast[8] constitutes publication. So is the filing in a Court a petition containing defamatory matter concerning a person with the intention that it should be read by other persons[9]. When a person presents a defamatory petition to a superior public officer, who, in the ordinary course of official routine, sends it to some subordinate officer for inquiry, there is a publication of the letter at the place where he may receive it, and publication for which the original writer may *prima facie* be held responsible, whether or not he expressly asks for an inquiry[10]. Communication to a husband or

[1] Bacon's Abrid. 206.

[2] *Varnakote Illath*, (1900) 1 Weir 579.

[3] *Boxsius* v. *Goblet Freres*, [1894] 1 Q. B. 842.

[4] *Sadashiv Atmaram*, (1893) 18 Bom. 205.

[5] *Taki Husain*, (1884) 7 All. 205, F. B.

[6] *Adams*, (1888) 22 Q. B. D. 66.

[7] *Sri Vidya Sankara Narasimha*, (1883) 6 Mad. 381.

[8] *Thiagaraya* v. *Krishnasami*, (1892) 15 Mad. 214.

[9] *Greene* v. *Delanney*, (1870) 14 W. R. 27; *Abdul Hakim* v. *Tej Chandar*, (1881) 3 All. 815.

[10] *Raja Shah*, (1889) P. R. No. 14 of 1889.

wife of a charge against the wife or husband is a publication[1], but uttering of a libel by a husband to his wife is not, as they are one in the eye of the law[2].

Where a libel is printed, the sale of each copy is a distinct publication and a fresh offence; and a conviction or acquittal on an indictment for publishing one copy will be no bar to an indictment for publishing another copy[3].

The person who publishes the imputation need not necessarily be the author of the imputation. The person who publishes and the person who makes an imputation are alike guilty[4].

Repetition.—The Code makes no exception in favour of a second or third publication as compared with the first. If a complaint is properly laid in respect of a publication which is *prima facie* defamatory, the Magistrate is bound to take cognisance of the complaint, and deal with it according to law[5].

Publication of defamatory matter in a newspaper.—The publisher of a newspaper is responsible for defamatory matter published in such paper whether he knows the contents of such paper or not[6]. But it would be a sufficient answer to a charge of defamation against the editor of a newspaper if he proved that the libel was published in his absence and without his knowledge and he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person[7].

The sending of a newspaper containing defamatory matter by post from Calcutta, where it is published, addressed to a subscriber at Allahabad, is publication of such defamatory matter at Allahabad[8].

Imputation.—It is immaterial whether the imputation is conveyed obliquely, or indirectly, or by way of question, conjecture or exclamation, or by irony.

The words " coward, dishonest man, and something worse than either[9]" and the words to the effect that the complainant and others were preparing to bring a false charge against the accused[10], are held to be defamatory.

1. 'Words either spoken.'—An essential difference between the Indian and the English law is that the former recognizes 'words spoken' as a mode of defamation, and the latter does not. By the English law, defamation is a crime only when it is committed by writing, printing, engraving or some similar process. Spoken words reflecting on the private character, however atrocious may be the imputation which these words convey, however numerous may be the assembly before which such words are uttered,

1 *Wenman* v. *Ash*, (1853) 13 C. B. 836.

2 *Wennhak* v. *Morgan*, (1888) 20 Q. B. D. 635 ; *Jaikishen Das* v. *Sher Singh*, (1910) P. R. No. 10 of 1910.

3 *Pundit Mokand Ram*, (1883) P. R. No. 12 of 1883.

4 *Janardhan Damodhar Dikshit*, (1894) 19 Bom. 703.

5 *Howard*, (1887) 12 Bom. 167.

6 *Mc Leod*, (1880) 3 All. 342.

7 *Ramasami* v. *Lokanada*, (1885) 9 Mad. 387.

8 *Mc Leod*, sup. ; *Girjashankar Kashiram*, (1890) 15 Bom. 286.

9 *Mc Carthy*, (1887) 9 All. 420.

10 *Shibo Prosad Pandah*, (1878) 4 Cal. 124.

furnish ground only for a civil action. Under the English law, no indictment will lie for words spoken and not reduced into writing unless they be seditious, blasphemous, grossly immoral or obscene, or uttered to a Magistrate in the execution of his office, or uttered as a challenge to fight a duel, or with an intention to provoke the other party to send a challenge[1]. The Penal Code makes no distinction between written and spoken defamation[2]. In it the term 'defamation' is used to embrace both libel and slander. The Authors of the Code observe: "Herein the English law is scarcely consistent with itself. For if defamation be punished on account of its tendency to cause breach of the peace, spoken defamation ought to be punished even more severely than written defamation, as having that tendency in a higher degree.

"The distinction which the English Criminal law makes between written and spoken defamation is generally defended on the ground that written defamation is likely to be more widely spread and to be more permanent than spoken defamation. These considerations do not appear to us to be entitled to much weight. In the first place, it is by no means necessarily the fact that written defamation is more extensively circulated than spoken defamation. Written defamation may be contained in a letter intended for a single eye. Spoken defamation may be heard by an assembly of many thousands. It seems to us most unreasonable that it should be penal to say, in a private letter, that a man is dissipated, and not penal to stand up at the town hall and there, before the whole society of Calcutta, falsely to accuse him of poisoning his father.

"In the second place, it is not necessarily the fact that the harm caused by defamation is proportioned to the extent to which the defamation is circulated. Some slanders— and those slanders of a most malignant kind—can produce harm only while confined to a very small circle, and would be at once refuted if they were published. A malignant whisper addressed to a single hearer, and meant to go no further, may indicate greater depravity, may cause more intense misery, and may deserve more severe punishment, than a satire which has run through twenty editions. A person, for example, who, in private conversation, should infuse into the mind of a husband suspicions of the fidelity of a virtuous wife, might be a defamer of a far worse description than one who should insert the lady's name in a printed lampoon[3]."

2. **'By signs or by visible representations.'**—The words 'visible representations' will include every possible form of defamation which ingenuity can devise. For instance, a statute, a caricature, an effigy, chalkmarks on a wall, signs or pictures may constitute a libel[4].

3. **'Intending to harm.'**—It is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended to harm, or knew,

1 See Archbold, 23rd Edn., p. 127.

2 *Parvathi* v. *Mannar*, (1884) 8 Mad. 175; *Mohunt Pursoram Doss*, (1865) 2 W. R. 36.

3 Note R.

4 Per Lopez, L. J., in *Monson* v. *Tussauds*, [1894] 1 Q. B. 671, 692.

or had reason to believe that the imputation made by him would harm the reputation of the complainant'.

The meaning to be attached to the word 'harm' is not the ordinary sense in which it is used. By 'harm' is meant imputations on a man's character made and expressed to others so as to lower him in their estimation. Anything which lowers him merely in his own estimation does not constitute defamation[2].

"Reputation."—A man's opinion of himself cannot be called his 'reputation[3]'. A man has no 'reputation' to himself and therefore communication of defamatory matter to the person defamed is no publication.

Explanation 1.—A prosecution may be maintained for defamation of a deceased person, but it has been ruled that no suit for damages will lie in such a case. Where, therefore, a suit was brought by the heir and nearest relation of a deceased person for defamatory words spoken of such deceased person, but alleged to have caused damage to the plaintiff as a member of the same family, it was held that the suit was not maintainable[4].

Explanation 2.—An action of libel will lie at the suit of an incorporated trading company in respect of a libel calculated to injure its reputation in the way of its business[5]. The words complained of must attack the corporation or company in the method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position[6].

Exception 1.—This exception and exception 4 require that the imputation should be true. The remaining exceptions do not require it to be so. They only require that it should be made in good faith.

The truth of the imputation complained of shall amount to a defence if it was for the public benefit that the imputation should be published, but not otherwise.

A Court may find that an imputation is true, and made for the public good, but on considering the manner of the publication (*e. g.*, in a newspaper) it may hold that the particular publication is not for the public good, and is, therefore, not privileged[7]. A privilege does not justify publication in excess of the purpose or object which gives rise to it[8]. If, in addition to statements which would be protected, a person goes further and makes false and uncalled for statements, he cannot then be regarded as acting in good faith[9].

Case.—C was put out of caste by a committee of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of the committee, circulated a letter to the members of their caste stating that C and such woman had been put

1 *Gobinda Pershad Pandey* v. *Garth*, (1900) 28 Cal. 63.

2 Per Mahmood, J., in *Taki Hussain*, (1884) 7 All. 205, 220, F. B.

3 *Ibid*, p. 221.

4 *Luckumsey* v. *Hurbun*, (1881) 5 Bom. 580.

5 *South Hetton Coal Co. Ltd.* v. *N. E. News Association*, [1894] 1 Q. B. 133.

6 *Ibid*, p. 141.

7 *Janardhan Damodhar* v. *Dikshit*, (1894) 19 Bom. 703.

8 *Sri Vidya Sankara Narasimha*, (1883) 6 Mad. 381, 395.

9 *Ramanand*, (1881) 3 All. 664.

out of caste and requesting the members of the caste not to receive them into their house or to eat with them. It was held that, had such persons contented themselves with announcing the determination of the committee and the grounds upon which such determination was based, they would have been protected, but inasmuch as they went further and made false and uncalled for statements regarding C, they had not acted in good faith[1].

Exception 2.—Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he does not make his commentary a cloak for malice and slander. A writer in a public paper has the same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the acts of public men which concern not himself only but which concern the public, and the discussion of which is for the public good. And where a person makes the public conduct of a public man the subject of comment, and it is for the public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any mis-statement which he must have known to be a mis-statement if he had exercised ordinary care[2].

No kind of privilege attaches to the profession of the press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The range of his assertions, his criticisms, or his comments is as wide as, and no wider than, that of any other subject[3].

The public acts of a judge may be adversely commented. Freedom would be seriously impaired if the judicial tribunals were outside the range of such comment[4].

Exception 3.—The conduct of publicists who take part in politics or other matters concerning the public can be commented on in good faith. M, a medical man and the editor of a medical journal, said in such journal of an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was surgeon in charge, stating the number of successful operations which had been performed, that it was unprofessional. It was held that inasmuch as such advertisement had the effect of making such hospital a "public question," M was within the third, sixth, and ninth exceptions[5].

Exception 4.—Where there are judicial proceedings before a properly constituted judicial tribunal exercising its jurisdiction in open Court, then the publication without malice, of a fair and accurate report of what takes place before that tribunal is privileged[6]. Though the publication of such proceedings may be to the disadvantage of the particular individual concern-

1 *Ibid.*

2 *Howard* v. *Mull*, (1866) 1 B. H. C. App. lxxxv, xcv.

3 *Arnold*, (1914) 41 Cal. 1023, 16 Bom. L. R. 544, P. C.

4 *Ibid.*

5 *McLeod*, (1880) 3 All. 342.

6 *Kimber* v. *The Press Association*, [1893] 1 Q. B. 65, 68.

ed, yet it is of vast importance to the public that the proceedings of Courts of justice should be universally known. The general advantage to the country in having these proceedings made public, more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings[1]. It is immaterial whether the proceedings were *ex parte* or not[2], or whether the Court had jurisdiction or not[3]. But a report of judicial proceedings cannot be published if a Court has prohibited the publication of any such proceedings[4], or where the subject matter of the trial is obscene[5] or blasphemous[6].

Case.—An accused, who was the trustee of a temple, was convicted of defamation, the alleged defamatory statement being that the complainant, who performed the worship in a temple, had been convicted and sent to jail for the theft of idols belonging to the temple. It was held that the accused was justified in making the statement either in the interest of the temple or because the statement was no more than a publication of the result of proceedings in a Court of Justice[7].

Exception 5.—The administration of justice is a matter of universal interest to the whole public. The judgment of the Court, the verdict of the jury, the conduct of parties and of witnesses, may all be made subjects of free comment. But the criticism should be made in good faith and should be fair. It must not wantonly assail the character of others or impute criminality to them. But in commenting on such matters a public writer, as much as a private writer, is bound to attend to the truth, and to put forward the truth honestly and in good faith and to the best of his knowledge and ability. It is not to be expected that in discharging his duty of a public journalist he will always be infallible. His judgment may be biassed, one way or the other, without the slightest reflection upon his good faith; and, therefore, if his comments are fair, no one has a right to complain[8].

Exception 6.—The object of this exception is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. All kinds of performances in public may be truly criticised provided the comments are made in good faith and are fair. Liberty of criticism is allowed, otherwise we should neither have purity of taste nor of morals. Good faith under this exception requires not logical infallibility but due care and attention[9].

Exception 7.—This exception allows a person under whose authority others have been placed, either by their own consent or by the law, to censure, in good faith, those who are so placed, under his authority, so far as regards the matter to which that authority relates[10]. But if this privilege is

1 *Wright*, (1799) 8 T.R. 293, 298.
2 *Kimber* v. *The Press Association*, [1893] 1 Q. B. 65.
3 *Usill* v. *Hales*, (1878) 3 C. P. D. 319.
4 *Clement*, (18 1) 4 B. & Ald. 218.
5 *Hicklin*, 1868) L. R. 3 Q. B. 360.
6 *Mary Carlile*, (1819) 3 B. & Ald. 167.
7 *Singaraju Nagabhushanam*, (1902) 26 Mad. 464.
8 *Woodgate* v. *Ridout*, (1865) 4 F. & F. 202, 216, 223.
9 *Abdool Wadood Ahmed*, (1907) 9 Bom. L. R. 230.
10 Note R.

exceeded in any way the offence will be established. A man may in good faith complain of the conduct of a servant to the master of the servant even though the complaint amounts to defamation, but he is not protected if he publishes the complaint in a newspaper. A spiritual superior, in pronouncing and publishing a sentence of excommunication, may be protected by privilege so long as the publication is not more extensive than is required to effectuate the purpose for which the privilege is conceded to him for the censure of a member of the sect in matters appertaining to religion or the communication of a sentence is authorised to pronounce to those who are to guide themselves by it[1].

Case.—Imputation made by a person in authority.—Where the spiritual guide of the caste to which K belonged, issued a letter to K's fellow villagers to the effect that, as K's wife had been found in the company of a man of a lower caste, no one of her co-religionists should have any social intercourse with her and that she should be outcasted, it was held that the statements contained in the letter had been made in good faith for the protection of the social and spiritual interests of the community[2].

Exception 8.—To obtain the protection given by this exception (1) the accusation must be made to a person in authority over the party accused, and (2) the accusation must be preferred in good faith. If an officer maliciously makes to his superior a defamatory report against any person he will be guilty[3]. Complaints made to a Magistrate or to a Policer-Officer are not protected if they are not made in good faith[4].

Cases.—A letter written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, was held to come under this exception and exception 10[5].

The accused, in appealing against the levy of assessment by the complainant (a Mamlatdar) by sale of moveable property, alleged that the complainant had acted towards the accused unjustly and spitefully, that in passing the order appealed against he was actuated by personal ill-will and malice towards the accused and had exercised his authority with a view to cause harassment and loss to the accused. It was held that the accused was protected by exceptions 8 and 9 and he was not guilty of defamation[6].

Exception 9.—This exception relates to private communications which a person makes, in good faith, for the protection of his own interests or of any other person, or for the public good. Any one in the transaction of business with another has a right to use language *bona fide* which is relevant to that business, and which, a due regard to his own interests makes necessary, even if it should directly, or by its consequences, be injurious or pain-

[1] *Sri Vidya Sankara Narasimha*, (1883) 6 Mad. 381, 395, 396.
[2] *Basumati Adhikarini* v. *Budram Kolita*, (1894) 22 Cal. 46.
[3] *Abdur Razak* v. *Gouri Nath*, (1909) P.W.R. (Cr. R.) No. 4 of 1910.
[4] *Abdul Hakim* v. *Tej Chandar*, (1881) 3 All. 815.
[5] *Kashinath Bachaji Bagul*, (1871) 8 B.H.C. (Cr. C.) 168.
[6] *Anandrao Balkrishna Rangnekar*, (1914) 17 Bom. L.R. 82.

ful to another. The rule of public policy on which it is based is that honest transaction of business and of social intercourse will otherwise be deprived of the protection which they should enjoy[1]. Where a man who was watching a case on behalf of his partner informed the judge, while the hearing was going on, that the complainant was tampering with witnesses and asked that the complainant might be directed to sit in Court, and it appeared that there was no malice or bad faith in making the imputation, it was held that the case fell within this exception[2].

This exception includes the first exception. It refers to any imputation made in good faith, whereas the first exception applies only to true imputation made for the public good.

It is not essential that, before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true. If having regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his good faith[3].

There is a dividing line between the passing of a resoultion at a caste meeting and its communication by the authorities of the caste to its members in the discharge of their social duty. If any member of a caste publish to all its members a caste resolution in such discharge of duties, the law will hold the occasion of the publication to be privileged. But there must be good faith on the part of the member who publishes, that is, it must be proved that the publication was made with due care and attention[4]. Where a libellous communication is made regarding a member of a caste, the mere fact that the person making such communication is a member of the caste will not of itself suffice to make the communication privileged[5] A person making defamatory expressions for the protection of his son's interests is not privileged, unless the imputation is made in good faith[6].

The privileges of judges, parties, counsel, attorney, pleader and witnesses, come under this exception So also, statements made in pleadings and reports to superior officers are protected by it. (As to civil actions, see the Authors' Law of Torts, Chapter XIII.)

In India the law regarding defamatory statements made, in the course of judicial proceedings, by judges, counsel or pleaders, witnesses and parties is in an unsettled condition. The High Court of Madras has adopted the English rule of absolute immunity in all cases. The Bombhy High Court has not followed the English rule in cases of criminal prosecution on the ground that English law could not be resorted to where it went beyond the

1 *Slater*, (1890) 15 Bom. 351.
2 *Purshotam Kala*, (1885) 9 Bom. 269.
3 *Nagarji Trikamji*,(1894) 19 Bom. 340.
4 *Virji Bhagwan*, (1909) 11 Bom. L.R. 638.
5 *Cooppoosami Chetty* v. *Duraisamy Chetty*, (1909) 33 Mad. 67.
6 *Abdul Hakim* v. *Tej Chandar Mukarji*, (1881) 3 All. 815.

terms of s. 499; but in civil actions it has followed the dictum of the Privy Council in *Baboo Gunnesh Dutt* v. *Mugneeram Chowdhry*[1]. The Allahabad High Court has gone a step further and held that cases of defamation under the Code as well as civil suits for damages must be decided in accordance with the provisions embodied in the Penal Code and the Indian Evidence Act. The Calcutta High Court has in recent cases adopted the Allahabad view.

Judge.—Section 77 protects Judges for acts done when acting judicially, and the illustration to exception 7 of this section protects a Judge censuring in good faith the conduct of a witness. There is no reported criminal case touching the absolute immunity of a Judge, but the principles laid down in civil actions will equally apply to criminal prosecutions[2].

An action for defamation cannot be maintained against a Judge for words used by him whilst trying a cause in Court, even though such words are alleged to be false, malicious, and without reasonable cause[3]. The ground alleged from the ancient times as that on which this rule rests is that if such an action will lie, the Judges would lose their independence, and that the absolute freedom and independence of the Judges is necessary for the administration of justice[4]. This provision of the law is not for the protection of a malicious or corrupt Judge, but for the benefit of the public, whose interest it is that the Judges do exercise their functions with independence and without fear of consequences[5].

Counsel, Pleader, etc.—No action will lie against an advocate for defamatory words spoken with reference to, and in the course of, an enquiry before a judicial tribunal, although they are uttered by the advocate maliciously and not with the object of supporting the case of his client, and are uttered without any justification or even excuse and from personal ill will or anger towards the person defamed arising out of a previously existing cause, and are irrelevant to every issue of fact which is contested before the tribunal[6]. This principle of the common law is applied to advocates in this country by the Madras High Court in *Sullivan* v. *Norton*[7]. The Bombay High Court has, however, observed that that is not an interpretation of s. 499 which should be construed without reference to the English law. It has further held that where express malice is absent (and it ought not to be presumed) a Court, having due regard to public policy, would be extremely cautious before it deprived the advocate of the protection of exception 9. Where a pleader in addressing a Mamlatdar, on behalf of the accused, commented on some of the witnesses for the prosecution, and called them 'loafers,' and was prosecuted for defamation, it was held that in the absence of express malice (which was not to be presumed) the pleader was protected by this exception, and that in considering whether there was good faith the position of the person making the imputation must be taken into

1 (1872) 11 B.L.R. 321, P.C.
2 *Pursoram Doss*, (1865) 3 W.R. 45.
3 *Raman Nayar* v. *Subramanya Ayyan*, (1893) 17 Mad. 87.
4 *Anderson* v. *Gorrie*, [1895] I Q. B 668.
5 *Raman* v. *Subramanya*, sup.
6 *Munster* v. *Lamb*, (1883) 11 Q. B. D. 588.
7 (1886) 10 Mad. 28, F. B.

consideration[1]. But in a subsequent case, it has been laid down that in this country an advocate enjoys the same measure of license as he enjoys in England; that he cannot be punished for acting on the instructions given him when he did not and could not know that they were false; and that he has the fullest liberty of speech so long as his language is justified by his instructions, or by the evidence, or by the proceedings on the record. The mere fact that his words are defamatory, or that they are calculated to hurt the feelings of another or that they ultimately turn out to be absolutely devoid of all solid foundation, will not make him responsible nor render him liable in any civil or criminal proceedings[2]. In a later case the Bombay High Court, after expressing a doubt whether an advocate or pleader has the unqualified privilege accorded to him in England, held that when a pleader was charged with defamation, in respect of words spoken or written while performing his duty as a pleader, the Court ought to presume good faith and not hold him criminally liable unless there was satisfactory evidence of actual malice and unfair advantage taken of his position as a pleader. In this case a pleader representing a complainant wrote to the trying Magistrate to enquire when the latter would take up the case for trial and in the letter described the accused as a 'notorious wrong-doer.' On a prosecution for defamation, it was held that the pleader was guilty as the libel was not uttered by him in the discharge of his duty as a pleader[3].

The Calcutta High Court has decided that a pleader is entitled to the presumption that the questions he asks in cross-examination are put in good faith for the protection of his client's interest. To rebut this presumption there must be evidence that the pleader was actuated by an improper motive personal to himself and not by a desire to protect or further his client's interest. It is the duty of the pleader to present his client's case, but it is not his duty to enquire whether it is true or false[4].

Witness.—In *Queen-Empress* v. *Babaji*[5] the Bombay High Court held that a witness cannot be prosecuted for defamation in respect of statements, made by him when giving evidence in a judicial proceeding But Telang J. expressed a doubt whether irrelevant evidence would be protected under this exception though he concurred with Fulton, J., who said: "Section 499 was not intended to include statements made in the witness-box[6]." In *In re Nagarji Trikamji*[7] Jardine and Farran, JJ., said that the extent of a witness' privilege was not clearly settled. The Bombay High Court has, therefore, not definitely spoken on the subject.

Where the Magistrate making the inquiry is not sitting as a 'Court' the accused is not entitled to claim the absolute protection from a charge of defamation as a witness in a judicial proceeding[8].

1 *Nagarji Trikamji*, (1894) 19 Bom. 340.
2 *Bhaishankar* v. *Wadia*, (1899) 2 Bom. L. R. 3, F. B.
3 *Purshottamdas Ranchoddas*, (1907) 9 Bom. L. R. 1287.
4 *Nikunja Behari Sen* v. *Harendra Chandra Sinha*, (1913) 41 Cal. 514.
5 (1892) 17 Bom. 127.
6 *Balkrishna Vithal*, (1893) 17 Bom. 573.
7 (1894) 19 Bom. 340.
8 *Karigowda*, (1894) 19 Bom. 51.

According to the Calcutta High Court, a witness, who, being actuated by malicious motives, makes a voluntary and irrelevant statement, not elicited by any question put to him while under examination, to injure the reputation of another, commits an offence under this section[1]. If the statement is relevant to the enquiry no prosecution would lie[2].

The Madras High Court is of opinion that statements of witnesses made in the witness-box are absolutely privileged. If they are false the remedy is by indictment for perjury and not for defamation[3]. A statement made in answer to a question put by a Police officer under the Criminal Procedure Code, s. 161, in the course of investigation made by him, is privileged and cannot be made the foundation of a charge of defamation[4].

The Allahabad High Court has held that a witness can be prosecuted for defamatory statements concerning a person unless he shows that the statements fall under one of the exceptions to this section[5].

The Chief Court of the Punjab is of opinion that this exception modifies the principle of English law. The true test of immunity in the case of witnesses, as of other persons, is whether the exception is established in its entirety[6].

Parties.—The Madras High Court has held that if the accused himself asks any question, while defending himself, the question could not be made the subject of a civil action, nor would any criminal proceedings lie for defamation[7]. Where a person who was being defended by counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character, it was held that he was guilty of defamation[8].

In a Full Bench case the Madras High Court has laid down that the statement of a person charged with an offence in answer to a question by the Court is absolutely privileged[9]. But if a defamatory statement is made before an officer who is neither a judicial Officer nor a Court, *e. g.*, a Registration Officer, it has held, in a subsequent Full Bench case, that such a statement is not absolutely privileged[10].

The Allahabed High Court and the Chief Court of the Punjab have held that a suitor is not absolutely privileged under this exception[11].

Pleadings.—Authority is strongly against the absolute immunity from prosecution for defamatory statements contained in applications, pleadings and affidavits. The Allahabad High Court is of opinion that defamatory

1 *Haidar Ali* v. *Abru Mia*, (1905) 32 Cal. 756.

2 *Woolfun Bibi* v. *Jesarat Sheikh*, (1899) 27 Cal. 262.

3 *Manjaya* v. *Sesha Shetti*, (1888) 11 Mad. 477.

4 *Govinda Pillai*, (1892) 16 Mad. 235.

5 *Ganga Prasad*, (1907) 29 All. 685; *Isuri Prasad Singh* v. *Umrao Singh*, (1900) 22 All. 234.

6 *Maya Das*, (1893) P. R. No. 14 of 1893.

7 *Hayes* v. *Christian*, (1892) 15 Mad. 414.

8 *Ibid.*

9 *Venkata Reddy*, (1911) 36 Mad. 216, F. B

10 *Krishnamal* v. *Krishnaiyangar*, (1912) 23 M.L.J.R. 50, F. B.

11 *Gajadhar*, (1890) 10 A. W. N. 170; *Fateh Muhammad*, (1889) P.R. No. 34 of 1889.

statements are not privileged merely because they are used in a petition, preferred in a judicial proceeding, but good faith, as required in this exception, should be proved[1]. Where in an application for the transfer of a criminal case the applicants alleged, with some apparent reason, that the case had been falsely got up against them by the complainant at the instigation of one U, in order to prejudice them in their defence in a civil suit which U had caused to be brought against them, it was held that this statement did not amount to defamation as it fell within the ninth exception[2].

The Calcutta High Court has held that a person is liable under this section for making a defamatory statement in an affidavit if the statement is wholly irrelevent to the enquiry to which the affidavit relates[3].

There is a conflict in the decisions of the Calcutta High Court on the question whether statements made by a complainant in a petition presented to a Magistrate are absolutely privileged[4]. The Madras High Court has held that a defamatory statement in a complaint to a Magistrate is absolutely privileged[5]. It has held that there is no difference between evidence given in the box and the evidence on affidavit; in that they are both absolutely privileged and no suit for damages will lie in respect of evidence given therein[6].

According to English law no action lies for any statement in the pleadings.

Exception 10.—This exception protects a person giving caution in good faith to another for the good of that other, or of some person in whom that other is interested, or for public good.

Case—The complainant, a Brahman, who had been put out of caste, was re-admitted by the executive committee of the caste after performing expiatory ceremonies. This re-admission was not approved of by the accused, who formed a faction of the caste; and they, after an interval of six months, distributed in the bazaar to all classes of the public printed papers in which the complainant was described as a sinner, which signified that he was a person unfit to be associated with. The accused were charged with the offence of defamation. They pleaded privilege, and it was admitted that they had acted without malice. It was held that the accused had not acted in good faith, and that the publication was not, under the circumstances, privileged and protected by this exception[7].

Complaint by the aggrieved person necessary.—No Court shall take cognizance of this offence except upon a complaint made by the person aggrieved.

[1] *Abdul Hakim* v. *Tej Chandar Mukarji*, (1881) 3 All. 815; *Isuri Prasad Singh* v. *Umrao Singh*, (1900) 22 All. 234.

[2] *Isuri Prasad Singh* v. *Umrao Singh*, sup.

[3] *Giribala Dassi* v. *Pran Krishto Ghosh*, (1903) 8 C.W. N. 292.

[4] *Golap Jan* v. *Bholanath Khettry*, (1911) 38 Cal. 880: *Kari Singh*, (1912) 40 Cal. 441 f. n.: contra *Kari Singh*, (1912) 40 Cal. 433

[5] *Muthusami Naidu*, (1912) 37 Mad. 110.

[6] *Adapala Adiraramma* v. *Robala Ramchandra Reddi*, (1910) 8 M. L. T. 55.

[7] *Thiugaraya* v. *Krishnasami* (1892) 15 Mad. 214.

A prosecution for defamation being essentially a personal action cannot be continued by the legal representatives of a deceased person[1].

A charge of defamation not contained in the complaint presented to the Magistrate, but added subsequently by the Magistrate upon statements made by the complainant, is not a legal complaint made by the aggrieved person[2].

Husband.—A husband is entitled to be a complainant where the alleged offence is defamation imputing unchastity to his wife[3].

Brother.—A brother, who lives with his widowed sister, a Hindu lady, is entitled to complain about the defamation of the sister[4].

Brother-in-law.—Where a person prosecuted another for defaming his sister-in-law, it was held that as there was no imputation made against the complainant there was no defamation of him, and his sister-in-law, being the person defamed, ought herself to have made the complaint[5].

President of a Municipality. He is not a 'person aggrieved' within the meaning of s. 198 of the Criminal Procedure Code by the defamation of his subordinate officers[6].

Printing or engraving matter known to be defamatory.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CASES.

The offence under this section is a distinct offence from the one under s. 500. The person printing or engraving defamatory matter abets the offence. This section makes such abetment a distinct offence.

Ingredients.—This section requires two things :—

1. Printing or engraving any matter.
2. Knowledge or reason to believe that such matter is defamatory.

Sale of printed or engraved substance containing defamatory matter.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

[1] *Ishar Das*, (1908) P. R. No. 10 of 1908.

[2] *Deokinandan*, (1887) 10 All. 39.

[3] *ChhotalalLallubhai* v. *Nathabhai Bechar*, (1900) 2 Bom. L. R. 665, 25 Bom. 151 F. B ; *Chellam Naidu* v. *Ramasami*, (1891) 14 Mad. 379.

[4] *Thakur Das* v. *Adhar Chandra*, (1904) 32 Cal. 425.

[5] *Laksman*, (1888) Unrep. Cr. C. 392, Cr. R. No. 48 of 1888.

[6] *Beauchamp* v. *Moore*, (1902) 26 Mad. 43.

COMMENT.

This section supplements the provisions of the previous section by making the seller of defamatory matter punishable under it.

Ingredients.—This section requires two essentials :—

1. Selling or offering for sale any printed or engraved substance.
2. Knowledge that such substance contains defamatory matter.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

ILLUSTRATION.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

COMMENT.

The offence of criminal intimidation seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt to commit the offence, since otherwise the attempt would be to do something not constituting the offence[1].

Ingredients.—This section has the following essentials :—

1. Threatening a person with any injury
   (i) to his person, reputation, or property ; or
   (ii) to the person, or reputation of any one in whom that person interested.
2. The threat must be with intent
   (i) to cause alarm to that person, or

[1] *Mangesh Jivaji*, (1887) 11 Bom. 376, 379, 380.

(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, or

(iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

1. 'Threatens another with any injury'.—The gist of the offence is the effect which the threat is intended to have upon the mind of the person threatened, and it is equally clear that before it can have any effect upon his mind it must be either made to him by the person threatening or communicated to him in some way. The threat referred to in this section must be a threat communicated or uttered with the intention of its being communicated to the person threatened for the purpose of influencing his mind[1].

A communication by a person that he is going to take revenge by false complaints cannot amount to threat or criminal intimidation. A threat, in order to be indictable, must be made with intent to cause alarm to the complainant[2].

'Injury.'—There can be no criminal intimidation where the injury of which complaint is made is the hardship arising from a conventional punishment, which a spiritual superior, acting in the exercise of his authority as regulated by the custom of the caste, is competent to inflict.[3] Where the accused held out a threat of getting a Head Constable of Police dismissed from service, it was held that this did amount to a threat of injury as was punishable under this section[4].

Criminal Intimidation and Extortion.—Criminal Intimidation is analogous to Extortion. In Extortion the immediate purpose is filthy lucre by obtaining money or money's worth; in Criminal Intimidation, the immediate purpose is to induce the person threatened to do, or abstain from something which he was not legally bound to do or omit.

CASES.

Threat of vengeance.—A Constable was sent to fetch to a Police Inspector some persons from whom the latter wished to make inquiries regarding an offence. While the Constable was taking two persons with him, the accused came up and threatened them both and the Constable with the Head Constable's vengeance, and as a consequence the two persons refused to accompany the Constable who had to go without them. It was held that the accused had committed this offence[5].

Threat to get a person imprisoned.—Where the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Government, and would get him six months' imprisonment if he

1 *Guna Chunder Sen* v. *Gour Chunder Banikya*, (1888) 15 Cal. 671, 673.

2 *Govind Raoji*, (1900) 2 Bom. L. R. 55.

3 *Sri Vidya Sonkara Narasimha*, (1883) 6 Mad. 381; *Alya Dhurma*, (1870) Unrep. Cr. C. 37; Cr. R. 17th August 1870.

4 *Duda Hanmant Dani*, (1895) 20 Bom. 794.

5 *Purshotam Vanamali*, (1896) Unrep. Cr. C. 850, Cr R. No. 18 of 1895.

did not let his sister go, it was held that those words did not constitute an offence under this or any other section[1].

Threat to ruin another by false cases.—Where the accused who threatened to ruin the complainant by cases was convicted of criminal intimidation, it was held that the conviction could not stand, because had the threat been to ruin the complainant by false cases, the offence would have been committed; but as the threat was to ruin him by cases, it could not be assumed that by cases was meant false cases[2].

Person informed about threatened injury to another must be interested in that other person.—The accused sent a fabricated petition to the Revenue Commissioner, S. D., containing a threat that, if a certain Forest Officer were not removed elsewhere, he would be killed. It was found that the Commissioner had neither official nor personal interest in the Forest Officer. It was held that, as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to criminal intimidation[3]. A threat to commit suicide is not within the section unless the other person be interested in the person making the threat[4].

Intentional insult with intent to provoke breach of the peace.

504. Whoever intentionally insults, and thereby gives provocation to, any person intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.

An imputation not defamatory may be uttered in the hearing of the person who is the object of it, for the purpose of provoking that person to break the public peace. If so, it is punishable under this section. This section provides a remedy for using abusive and insulting language.

The law makes punishable the insulting provocation which, under ordinary circumstances, would cause a breach of the peace to be committed, and the offender is not protected from the consequence of his acts because the person insulted does not accept the provocation in the manner intended. Where, therefore, A abused B to such an extent as to reduce B to a state of abject terror, it was held that A, having given to B such provocation as

[1] *Moroba Bhaskarji*, (1871) 8 B. H. C. (Cr. C.) 101.

[2] *Jowahi Pattak* v. *Parbhoo Ahir*, (1902) 30 Cal. 418.

[3] *Mangesh Jivaji*, (1887) 11 Bom. 376.

[4] *Nubi Buksh* v. *Must. Oomra*, (1866) P. R. No. 109 of 1866.

would under ordinary circumstances have caused a breach of the peace, was guilty of this offence[1].

Ingredients.—This section requires two essentials :—

1. Intentionally insulting a person and thereby giving provocation to him.
2. The person insulting must intend to know it to be likely that such provocation will cause him to break the public peace.

Sections 499 and 504—The difference between an offence under this section and defamation lies in the fact that in defamation, publication to the prosecutor alone is not sufficient, as such an imputation could not be said to harm the reputation of the person ; but according to this section this would complete the offence. This section corresponds precisely with those cases in which, under the English law, defamatory matter published to the prosecutor alone would be indictable as libellous.

Statements conducing to public mischief.

505. Whoever makes, publishes or circulates any statement, rumour or report,—

(*a*) with intent to cause, or which is likely to cause, any officer, soldier or sailor in the Army or Navy of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such : or

(*b*) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity ; or

(*c*) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community ;

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

[1] *Jogayya*, (1887) 10 Mad. 353, 354.

COMMENT.

The section is aimed at reports calculated to produce mutiny or to induce one section of the population to commit offences against another.

Punishment for criminal intimidation.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Criminal intimidation by an anonymous communication.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Act caused by inducing person to believe that he will be rendered an object of Divine displeasure.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to go anything which he is legally entitled to do,

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

ILLUSTRATIONS.

(a) A sits dhurna at Z's door with the intention of causing it to be believed that by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

COMMENT.

This section is intended to prevent such practices as *dhurna* and *traga*.

A person who is excommunicated does not become an object of Divine displeasure by the act of the priest who pronounces the sentence.[1]

Word, gesture or act intended to insult the modesty of a woman.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that shall gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

COMMENT.

This section makes intention to insult the modesty of a woman the essential ingredient of the offence[2]. If a man intending to outrage the modesty of a woman exposes his person indecently to her or uses obscene words intending that she would hear them or exhibits to her obscene drawings, he committs this offence.

Ingredients.—This section requires the following essentials :—

1. Intention to insult the modesty of a woman.
2. The insult must be caused
   (i) by uttering any word or making any sound or gesture, or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman, or
   (ii) by intruding upon the privacy of such woman.

Misconduct in public by a drunken person.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to

[1] *De Cruz*, (1884) 8 Mad. 140.
[2] *Phiaz Mohamad*, (1903) 5 Bom. L.R. 502.

cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

COMMENT.

Ingredients.—This section requiries two essentials:—

1. Appearance of a person in a state of intoxication in
   (*i*) any public place, or
   (*ii*) any place which it is a trespass in him to enter.
2. The person so appearing must have conducted himself in such a manner as to cause annoyance to any person.

The immunity from punishment which the Code, through motives of humanity and justice, allows to persons mentally affected, is not extended to him who commits an offence through drunkenness; he shall not be excused because his incapacity arose from his own default, but is answerable equally as if he had been, when the act was done, in the full possession of his faculties, a principle of law which is embodied in the familiar adage *qui peccat ebruis luat sobrious.*

Mere intoxication is not made punishable. It is only when a person appears in a public place, as in a street, or goes to a place where he has no right to go and causes annoyance to the people, that he commits this offence.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

511. Whoever attempts to commit an offence punishable by this Code[1] with transportation or imprisonment[2], or to cause such an offence to be committed[3], and in such attempt does any act towards the commission of the offence[4], shall, where no express provision is made by this Code[5] for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

ILLUSTRATIONS.

(*a*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has

done an act towards the commission of theft, and therefore is guilty under this section.

(*b*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

COMMENT.

Scope.—The Allahabad High Court has held that this section does not apply to attempts to commit murder which are fully and exclusively provided for by s. 307[1]. The Bombay High Court has, however, held otherwise[2]. The Chief Court of the Punjab has laid down that this section is in terms much wider than s. 307. Under s. 307 the act done must be one capable of causing death, and it must also be the last proximate act necessary to constitute the completed offence ; under s. 511 the act may be *any* act in the course of the attempt towards commission of the offence.[3]

Essentials.—In every crime there is, first, intention to commit it ; secondly, preparation to commit it ; thirdly, attempt to commit it. If the third stage, that is attempt, is successful, then the crime is complete. If the attempt fails, the crime is not complete, but the law punishes the person attempting the act. An 'attempt' is made punishable because every attempt, although it fails of success, must create alarm, which, of itself, is an injury, and the moral guilt of the offender is the same as if he had succeeded.

An *attempt* to commit a crime must be distinguished from an *intention* to commit it and from *preparation* made for its commission[4].

(1) **Intention.**—Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice[5]. But the law does not take notice of an intent without an act[6]. Mere intention to commit an offence, not followed by any act, cannot constitute an offence.[7] The 'will is not to be taken for the deed' unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it.

2. **Preparation.**—Preparation consists in devising or arranging the means or measures necessary for the commission of an offence[8]. The provisions of the section do not extend to make punishable as attempts acts done in the mere stage of preparation[9].

1 *Niddha*, (1891) 14 All. 38 ; *Tulsha*, (1897) 20 All. 143.

2 *Cassidy*, (1867) 4 B. H. C. (Cr. C.) 17.

3 *Jiwan Das*, (1904) P. R. No. 30 of 1904.

4 *Peterson*, (1876) 1 All. 316, 317.

5 Stephen's General View of the Criminal Law of England, p. 69, (2nd edn.)

6 *Dugdale*, (1853) 1 E. &B. 435.

7 *Baku*, (1899) 1 Bom. L. R. 678 ; 24 Bom 287.

8 Quoted with approval from Mayne's Criminal Law in *Peterson's case*, (1876) 1 All. 316, 317 ; and in *Padala Venkatasami's case*, (1881) 3 Mad. 4, 5.

9 *Ramsarun Chowbey*, (1872) 4 N. W. P. 46, 48.

The law allows *locus pœnitentiæ*, and will not hold that a person has attempted a crime until he has passed beyond the stage of preparation[1]. A minor girl under the age of sixteen years was taken by accused No. 1, under the direction of accused No. 2, from Sholapur to Tuljapur (in the Nizam's territory) and there dedicated to Goddess Amba, with intent or knowing it to be likely that the minor would be used for purposes of prostitution. It was held that the intention of either of the accused while they were staying at Sholapur did not constitute any offence, and their accompanying the girl to Tuljapur did not by itself constitute an abetment. Ranade, J., said: "In the present case, beyond the mere intention and indirect preparation, there was no distinct offence by way of instigating the act committed out of British India. Mere intention not followed by any act cannot constitute an offence, and indirect preparation, which does not amount to an act which amounts to a commencement of the offence, does not constitute either a principal offence, or an attempt or abetment of the same[2]."

Preparation to commit an offence is punishable only when the preparation is to commit offences under s. 122 (waging war against the King-Emperor), s. 126 (preparation to commit depredation on the territories of any power at peace with the King-Emperor), and s. 399 (preparation to commit dacoity.)

Cases.—Causing banns of a bigamous marriage to be published.—Where a man, having a wife living, caused the banns of marriage between himself and a woman to be published, it was held that he could not be punished for an attempt to commit bigamy, because the act of causing the publication of the banns of marriage was an act done in the preparation to marry, but did not amount to an attempt to marry. The prisoner might, before any ceremony of marriage was commenced, have willed not to carry out his criminal intention of marrying her[3].

Purchase of stamp-papers.—In one case the Allahabad High Court held that mere purchasing of a stamped paper in the name of the person whose name it was intended to forge did not constitute an attempt to commit forgery[4]. But in subsequent cases, the same Court has held otherwise distinguishing this case. M instigated Z to personate C and to purchase in C's name certain stamped paper, in consequence of which, the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. It was held that the offence of fabricating false evidence was actually committed, and that M was guilty of abetting the commission of such offence[5]. The former case was distinguished on the ground that the endorsement of the stamp-vendor formed no part of the document which it was the intention of the purchaser to forge and that the offence of forgery had not proceeded beyond the stage of

1 *Padala Venkatasami*, (1881) 3 Mad. 4, 5.

2 *Baku*, (1899) 1 Bom. L. R. 678; 24 Bom. 287, 291.

3 *Peterson*, (1876) 1 All. 316, 317.

4 *Ramsarun Chowbey*, (1872) 4 N. W. P. 46, 48.

5 *Mula*, (1879) 2 All. 105.

preparation ; but in the latter case there was actual fabrication though no judicial proceedings had been instituted. In another case, C, calling himself K, went to a stamp-vendor, accompanied by a man named Kalyan, and purchased from him in the name of K a stamped paper. The two men then went to a petition-writer and, again giving his namo as K, they asked the petition-writer to write for them a bond for Rs. £0 payable by K to Kalyan. It was held that Kalyan was guilty of attempt to commit the offence under s. 467, and C of abetment of the said attempt[1]. Here, too, *Ramsaran's case* was distinguished on the ground that nothing was written on the stamp-paper. In a Madras case the High Court arrived at the same conclusion as that in *Ramsaran's case*. The accused there conspired with other persons to prepare a document purporting to be a valuable security which he knew would be a false document and be used for the purposes of fraud, and for that end prepared a draft which he was about to copy on an old stamp produced for the purpose, and applied to a person to supply the Telugu date corresponding to the English date which the document was to contain. It was held that the prisoner had not passed beyond the stage of preparation, and was not guilty of an attempt to forge, but only of abetment[2]. Where a person gave orders for the printing of certain receipt forms similar to those used by the Bengal Coal Company, and corrected the proofs of the same, it being his intention to use the receipt forms in order to commit a fraud, it was held that he could not be convicted of an attempt to commit forgery until he had done some act towards making one of the forms a false document, and that, until a form had been converted into a document, all that was done consisted in mere preparation for the commission of an offence[3].

Obtaining of a false certificate.—Where the accused by false statements obtained a certificate entitling him to a refund of octroi duty and was arrested before he applied for the refund, this was held to amount to a preparation only, for he might have to·n up the certificate or changed his mind[4].

Going with stale milk to a place of sale.—A contractor for the supply of milk to a regimental hospital was found in the hospital compound with about three gallons of stale milk in his possession going in the direction of the place where the cows were about to be milked, this milk being in a can similar to those in which the cows were milked. It was held that his act did not amount to more than preparation[5].

Acts preparatory to commit murder.—The accused asked a native doctor to supply her with medicine for the purpose of poisoning her son-in-law. It was held that the offence committed was not an attempt to murder, as it was a mere act by way of preparation to commit an offence and was not a transaction which would have necessarily ended in murder if not interrupted, but that such act might be held to be an instigating of the native doctor

1 *Kalyan Singh*, (1894) 16 All. 409.
2 *Padala Venkatasami*, (1881) 3 Mad. 4
3 *Ria'at Ali*, (1881) 7 Cal. 352.
4 *Dhundi*, (1886) 8 All. 304.
5 *Sukha*, (1885) P. R. No. 40 of 1885.

to abet the accused in the commission of murder, and with reference to s. 108, expl. 4, might have been punished under ss. 116 and 302[1]. The accused, on quarrelling with the complainant, fetched a sword, but was seized and disarmed by others before he could use it. But he asserted, while under restraint, his intention of killing the complainant if he were let go. It was held that fetching a sword was not an attempt under this section. "It is quite possible that although the prisoner fetched the sword, he might not after all have actually used it against the complainant, who was his own brother[2]."

House-breaking.—A person, who went at night on the roof of another's house with a stick and an instrument for house-breaking, was held to be guilty of house-trespass under s. 447 and not of an attempt to commit house-breaking by night, because mere presence on the roof of a house merely amounted to preparation and nothing more[3].

Running towards a well for committing suicide.— A woman ran to a well stating she would jump into it, and she was caught before she could reach it. The High Court held that she could not be convicted of an attempt to commit suicide as she might have changed her mind before jumping into the well[4].

(3) **Attempt.**—Attempt is the direct movement towards the commission after the preparations are made[5].

In a Bombay case 'attempt' has been defined as an intentional preparatory action which fails in object—which so fails through circumstances independent of the person who seeks its accomplishment[6]. When a man does an intentional act with a view to attain a certain end and fails in his object through some circumstances, independent of his own will, then that man has attempted to effect the object at which he aimed[7].

The Calcutta High Court in *Riasat Ali's case*[8] laid down that a person could not be convicted of an attempt to commit an offence under this section unless the offence would have been committed if the attempt charged had succeeded. It based its decision on the observations of Cockburn, C. J., in *R.* v. *McPherson*[9] (*viz.* "The word attempt clearly conveys with it the idea, that if the attempt had succeeded the offence charged would have been committed"), and of Blackburn, J., in *R.* v. *Cheeseman*[10] (*viz.* "If the actual transaction has commenced which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime"). *McPherson's case* was followed in *R.* v. *Collins*[11] wherein Cockburn, C. J., again said:

1 *Musst. Bakhtawar*, (1882) P. R. No. 24 of 1882.

2 *Data Ram*, (1882) P. R. No. 45 of 1882; see also *Sheru*, (1868) P. R. No. 18 of 1868.

3 *Walidad*, (1907) P. R. No. 15 of 1907.

4 *Ramakka*, (1884) 8 Mad. 5.

5 Quoted with approval from Mayne's Criminal Law in *Peterson's case*, (1876) 1 All. 316 and in *Padala Venkatasami's case*, (1881) 3 Mad. 4.

6 Per Jenkins, C. J., in *Luxman Narayan Joshi*, (1899) 2 Bom. L. R. 286.

7 Per Jenkins, C. J., in *Vinayck Narayan Bhatye*, (1889) 2 Bom. L. R. 304.

8 (1881) 7 Cal. 352.

9 (1857) Dears & B. 197, 202.

10 (1862) L. & C. 140, 145.

11 (1864) 9 Cox 497.

"An attempt to commit a felony can only (in point of law) be made out when, if no interruption had taken place, the attempt could have been carried out successfully, so as to constitute the offence which the accused is charged with attempting to commit." But both these cases have been expressly overruled in *R.* v. *Brown*[1] and *R.* v. *Ring*[2], which lay down that in order to prove that an attempt to commit felony has been committed, it is not necessary to prove that had the attempt not been frustrated the felony could have been committed. In *Q.* v. *Williams*[3] two Judges expressly say that they do not assent to the notion that a person cannot be convicted of an attempt to do that which the law says he cannot do. However, in a case[4], decided two years after *Brown's case*, we find the Calcutta High Court re-affirming its decision in *Riasat Ali's case*. The view of the Calcutta High Court is, therefore, not in accordance with the present view of the English law, and, as it is based on the authorities which are expressly overruled, it is no longer good law.

In *Ramsarun's case*,[5] Turner, J., says: "To constitute then the offence of attempt under this section, there must be *an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in* attempting *the commission of the offence.*"

An attempt can only be manifested by acts which would end in the consummation of the offence, but for intervention of circumstances independent of the will of the party[6].

Offence punishable by this Code.—No criminal liability can be incurred under the Code by an attempt to do an act, which, if done, will not be an offence against the Code[7].

Impossible offence.—An attempt is possible, even when the offence attempted cannot be committed; as when a person, intending to pick another person's pocket, thrusts his hand into the pocket, but finds it empty. That such an act would amount to a criminal attempt appears from the illustrations to s. 511. But in doing such an act, the offender's intention is to commit a complete offence, and his act only falls short of the offence by reason of an accidental circumstances which has prevented the completion of the offence[8].

2. **'With transportation or imprisonment.'**—Offences punishable with death only, or fine only, are not contemplated by this section.

3. **'To cause such an offence to be committed.'**—This will include an attempt to abet an offence. So it has been held that it is not legally impossible to attempt the abetment of an offence—the abetment of an offence being itself an offence[9].

4. **'Does any act towards the commission of the offence.'**—These words must not, it seems, be construed to include all acts, however remote, which

[1] (1889) 24 Q. B. D. 357.
[2] (1892) 17 Cox 491.
[3] [1893] 1 Q.B. 320.
[4] *Chandi Pershad* v. *Abdur Rahman*, (1894) 22 Cal. 131, 138.
[5] (1872) 4 N. W. P. 46, 47.
[6] *Peterson*, (1876) All. 316.
[7] *Manjesh Jivaji*, (1887) 11 Bom. 376, 381.
[8] *Ibid.*
[9] *Spier*, (1887) P. R. No. 49 of 1887.

tend towards the commission of the offence. The thing done may be too small or it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt[1]. Many acts, coupled with the intent, will not be sufficient. For instance, if a man intends to commit a murder, and is seen to walk towards the place of the contemplated scene, that will not be enough[2]. The act must be one immediately and directly tending to the execution of the principal crime, and committed by the prisoner under such circumstances that he has the power of carrying his intention into execution. Thus it is a sufficient overt act to render a person liable to be found guilty of attempting to set fire to a stack, if he go to the stack with the intention of setting fire to it, and light a lucifer match for that purpose, but abandons the attempt because he finds that he is being watched[3].

In each of the two illustrations given under this section there is not merely an act done with the intention to commit an offence, which act is unsuccessful because it could not possibly result in the completion of the offence, but an act is done 'towards the commission of the offence' that is to say, the offence remains incomplete only because something yet remains to be done, which the person intending to commit the offence is unable to do by reason of circumstances independent of his own volition. Thus in ill. (a) the act of breaking open the box is done towards the commission of the theft of the jewels. The theft itself, that is the actual removal of the jewels, still remains to be done and it remains undone only because it turns out that there are no jewels to remove. In the ill. (b) Z fails to comply with the essentials of theft simply because there is nothing in the pocket.

Where the accused pointed at the prosecutor a revolver loaded in some of its chambers with ball cartridges, but not in others, saying that he would shoot him, and he pulled the trigger of the revolver, but the hammer fell upon a chamber which contained an empty cartridge case, it was held that the prisoner could be convicted of attempting to discharge a loaded arm with intent to murder[4].

In *Mac Crea's case*[5] Knox, J., observes : "I do not hold, and have no hesistation in saying, that s. 511 was never meant to cover only the penultimate act towards completion of an offence and not acts precedent, if those acts are done in the course of the attempt to commit the offence, are done with the intent to commit it and done towards its commission."

The Bombay High Court, coinciding with the opinion of Knox, J., has held that this section does not relate only to the penultimate act, but to all preceding acts if they were done with the intent to commit or facilitate the commission of the act[6].

Cases—Attempt to obtain bribe.—Where B, who was employed as a clerk in the Pension Department, in an interview with A, who was an applicant

[1] See ills. to s. 307.
[2] *William Roberts*, (1855) Dears. 539, 550.
[3] *William Taylor*, (1859) 1 F. & F. 511.
[4] *Jackson*, (1890) 17 Cox 194.
[5] (1893) 15 All. 173, 179.
[6] *Anant Vinayek*, (1900) 2 Bom. L. R. 653 ; 25 Bom. 90.

for a pension, after referring to his own influence in that department, and instancing two cases in which, by that influence, increased pensions had been obtained, proceeded to intimate that anything might be effected by having his palm greased, and, on the overture being rejected, concluded by declaring that A would rue and repent the rejection of it, it was held that the offence of attempting to obtain a bribe was consummated[1].

Attempt to fabricate false evidence.—Where the accused dug a hole intending to place salt in it, in order that the discovery of the salt might be used in evidence against the prosecutor in a judicial proceeding, it was held that he was guilty of an attempt to fabricate false evidence, because by digging the pit he did an act towards the commission of the offence[2].

Attempt to steal.—The prisoner was entrusted by his master with some meat which was to be weighed out and delivered to a customer. By means of a false weight he kept back a part of the meat with intent to steal it; but the fraud was discovered before he had actually moved away with it. It was held that he had committed an attempt to steal the meat[3]. The accused were seen to hurry on to the plat-form of a station just as a train was about to start; they did not go by that train, and separated on reaching the platform. On the arrival of the succeeding train, they crowded round and hustled a woman who was entering a compartment, and one of them was seen endeavouring to find the pocket of her dress. It was held that they were guilty of attempt to steal[4].

Attempt to cheat.—A had obtained administration to the estate of his brother H, and had caused a Government Promissory Note, No. 9764, which belonged to M, to be entered in the letters of administration as part of the estate of the deceased. The Note was in the possession of the Controller-General, and the accused, MacCrea, joined A, in an attempt to induce that officer to deliver it to him, or to A. Letters were written by the accused to that officer but they were not relied on; and the Judge directed the attention of the jury to the acts committed by the accused in making use of the letters of administration granted to A, and in the preparation of a so-called copy of the lost Note, and its production before the City Magistrate. The scheme failed and the accused was convicted of an attempt to cheat. M wrote a letter to the Currency Office at Calcutta, enclosing the halves of two Government Currency Notes, stating that the other halves were lost, and enquiring what steps should be taken for the recovery of the value of the Notes. The Currency office having, upon inquiry, discovered that the amount of the Notes had been paid to the holder of the other halves, and that the Notes had been withdrawn from circulation and cancelled, sent M the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency office never contemplated paying M in respect of the

1 *Baldeo Sahai*, (1879) 2 All. 253.
2 *Nunda*, (1872) 4 N. W. P. 133.
3 *Cheeseman*, (1862) 9 Cox 100.
4 *Ring*, (1892) 61 L.J. (M.C.) 116.
5 *MacCrea*, (1893) 15 All. 173.

Notes. The form was filled up and signed by M, and returned by him to the Currency Office. It was held that, although there was no intention on the part of the Currency Office to pay the amount of the Notes, M was guilty of an attempt to cheat[1].

The accused manufactured certain spurious trinkets. He took them to a goldsmith and shewed them to him, saying that they were of gold and that they were stolen property (which they were not). He said that he did not wish to sell them in the bazar and said *kharidlo* (buy up). The goldsmith did not buy and the negotiations went no further. It was held that the accused was guilty of attempt to cheat[2].

Attempt to set fire.—In a village incendiarism had occurred on several occasions produced by a ball of rag with a piece of burning charcoal within it. The prisoner one evening was discovered to have a ball of that description, concealed in his loin cloth which contained burning charcoal. It was held that he was guilty of an attempt to commit mischief by fire[3].

5. 'Where no express provision is made by this Code.— The section does not apply to cases of attempts made punishable by some specific section of the Code. The attempts specially provided for are :—

Section 121, attempt to wage war against the Queen. Section 124, attempt wrongfully to restrain the Governor-General and other high officials with intent to induce or compel them to exercise or refrain from exercising any of their lawful powers. Section 125, attempt to wage war against the Government of any Asiatic power in alliance or at peace with the King. Section 130, attempt to rescue State prisoners or prisoners of war. Section 161, attempt by a public servant to obtain an illegal gratification. Section 162, attempt to obtain a gratification in order by corrupt or illegal means to influence a public servant. Section 163, attempt to obtain a gratification for exersing personal influence over a public servant. Section 196, corrupt attempt to use as true evidence known to be false. Sections 198 and 200, corrupt attempt to use as true a certificate or declaration known to be false in a material point. Section 213, attempt to obtain a gratification to screen an offender from punishment. Sections 239 and 240, attempt to induce a person to receive a counterfeit coin. Section 241, attempt to induce a person to receive as genuine counterfeit coin which, when the offender took it he did not know to be counterfeit. Sections 307 and 308, attempts to commit murder and culpable homicide. Section 309, attempt to commit suicide. Sections 385, 387 and 389, attempt to put a person in fear of injury or accusation in order to commit extortion. Section 391, conjoint attempt of five or more persons to commit a robbery. Sections 393, 394 and 398, attempts to commit robbery. Section 460, attempt by one of many joint house-breakers by night to cause death or grievous hurt.

[1] *The Government of Bengal* v. *Umesh Chunder Mitter*,(1888) 16 Cal. 310.

[2] *Abdullah*, (1914) P. R. No. 14 of 1914.

[3] *Doyal Bawri*, (1869) 3 B.L.R.(A. Cr. J.) 55.

SUMMARY.

The draft of the Indian Penal Code was prepared by the First Indian Law Commission when Macaulay was the President of that body. Its basis is the law of England freed from superfluities, technicalities, and local peculiarities. Suggestions were also derived from the French Penal Code and from Livington's Code of Louisiana. The draft underwent a very careful revision at the hands of Sir Barnes Peacock, Chief Justice, and other puisne Judges of the Calcutta High Court who were members of the Legislative Council, and was passed into law in 1860. Though it is principally the work of a man who had hardly held a brief, and whose time was devoted to politics and literature, yet it is universally acknowledged to be a monument of codification and an everlasting monument to the memory of its distinguished author.

The legitimate objects of penal legislation are the selection of those violations of right which are sufficiently dangerous to the good order of society to justify and require the infliction of punishment to repress them, and the adaptation of the degree of punishment to the purpose of repressing such violations.

A *crime* is an act of commission or omission, contrary to municipal law, tending to the prejudice of the community, for which punishment can be inflicted as the result of judicial proceedings taken in the name of the State. It tends directly to the prejudice of the community, while a civil injury tends more directly and immediately to the prejudice of a private right. The true test between a crime and a civil injury is that the latter is compensated by damages while the former is punished. The State is supposed to be injured by any wrong to the community, and is therefore the proper prosecutor. Many crimes include a tort or civil injury; but every tort does not amount to a crime, nor does every crime include a tort. Conspiracy, conversion, private nuisance, wrongful distress, etc., are merely torts. Assault, false imprisonment, false charge, defamation, etc., are all crimes as well as torts. Forgery, perjury, bigamy, homicide, etc., are crimes; but not torts.

The great difference between the legal and the popular meaning of the word *crime* is, that whereas the only perfectly definite meaning which a lawyer can

attach to the word is that of an act or omission punishable by law, the popular or moral conception adds to this the notion of moral guilt of a specially deep and degrading kind. By a criminal, people in general understand a person who is liable to be punished, because he has done something at once wicked and obviously injurious in a high degree to the commonest interests of society. Criminal law is, however, confined within very narrow limits and can be applied only to definite overt acts or omissions capable of being distinctly proved, whilst acts or omissions inflict definite evils, either on specific persons or on the community at large[1].

The First Law Commissioners observe:—"We cannot admit that a Penal Code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in a passion, or breaks a window in a frolic; yet we have punishments for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow-creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness[2]."

Criminal law forms generally a part of the public law not variable in any of its parts by the volition of private individuals and it is not necessarily deprived of its effect merely by the possible culpability of the individuals who may be the sufferers by the breach. The maxim *ex turpi causa non oritur actio* is not a sufficient excuse for a man who acts in opposition to the provisions of a penal statute. If a man, for instance, gives a spurious sovereign to a person for losing a bet, and the latter sues the former, he cannot succeed for a breach of contract.

There is no limitation to prosecute a person for an offence. *Nullum tempus occurit regi* (lapse of time does

1 Stephen's History of Criminal Law of England, Vol. 1.

2 Note Q.

not bar the right of the Crown). And as a criminal trial is regarded as an action by the King, it may be brought at any time. It would be odious and fatal, says Bentham, to allow wickedness, after a certain time, a triumph over innocence. No treaty should be made with malefactors of that character. Let the avenging sword remain always hanging above their heads. The sight of a criminal in a peaceful enjoyment of the fruit of his crimes, protected by the laws he has violated, is a consolation to evil-doers, an object of grief to men of virtue, a public insult to justice and to morals. The Roman law, however, laid down a prescription of twenty years for criminal offences as a rule. There is no period of limitation for offences which fall within the four corners of the Indian Penal Code.

Master's liability for servant's acts.

The master is liable for the tortious acts of his servants done in the course of his employment and for the master's benefit, but in criminal law he who does the act is liable except where a person who is not the doer abets or authorizes the act. There are, however, certain exceptions to this principle.—

1. Statutory liability. A statute may impose criminal liability upon the master as regards the acts or omissions of his servants. Licence cases form a class by themselves in which the master is generally held responsible.

2. Public nuisance. The owner of works carried on for his profit by his agents is liable to be indicted for a public nuisance caused by acts of his agents in carrying on the works.

3. Neglect of duty. If a person neglects the performance of an act, which is likely to cause danger to others, and entrusts it to unskilful hands he will in certain cases be criminally liable.

Date and extent of operation. Ch. I.

The Indian Penal Code came into operation on the 1st of January, 1862. It takes effect throughout the territories which are, or may become, vested in His Majesty the King-Emperor by 21 & 22 Vic. c. 106. For every act or omission contrary to its provisions, a person shall be liable to punishment under it (ss. 1 and 2). Every person is made liable to punishment under the Code without distinction of nation or rank. A foreigner, who enters the British territories and accepts the protection of British laws, virtually submits himself to their operation. The Penal Code does not exempt

any one from the jurisdiction of criminal Courts but the following are exceptions to this principle :—

(1) The Sovereign.
(2) Foreign Sovereigns.
(3) Ambassadors.
(4) Alien enemies.
(5) Foreign army.
(6) Men-of-war.

There are also several statutes exempting the Governor-General and members of his Council, the Governors and members of their Council, and the Judges of the High Court from the jurisdiction of ordinary Courts.

Territorial jurisdiction.

The territorial jurisdiction of ordinary criminal Courts will extend into the sea as far as a cannon shot will reach, which is usually calculated to be a marine league, or three miles. The territories of a state include the portion of the sea lying along and washing its coast, commonly called the maritime territory.

Leading case.—**R. v. Kastya Rama.**

Extra-territorial operation.

An offence committed *outside* British India may, however, be tried as an offence committed *in* British India under the following circumstances :—

1. By virtue of an Act passed by the Governor-General of India in Council (s. 3).

2. When such offence is committed

(1) by any native Indian subject of his Majesty ;

(2) by any other British subject within the territories of any Native Prince in India ;

(3) by any servant of the King, whether a British subject or not, within the territories of any Native Prince in India (s. 4).

Where an offence is committed *beyond* the limits of British India but the offender is found *within* its limits he may be

(I) extradited; or (II) tried in British India.

(I) The scene of offence may be—

Extradition.

(1) a Native State in which the Government has a Political Agent; or

(2) a foreign independent State; or

(3) some part of British Dominions.

(1) If in a Native State any one of the offences described in the first schedule to the Indian Extradition Act is committed, the Political Agent may issue a warrant to the

District Magistrate, within whose jurisdiction the offender has escaped, for his arrest, provided he is not a European British subject. A requisition can also be made by any Native State to the Government for the surrender of an accused person.

(2) If there is a treaty with a foreign independent State or a State which comes within the purview of Extradition Acts of 1870 and 1873 then the accused may be surrendered on requisition to the Government if the offence is of a non-political character. If the foreign State is not of the above description, then the offender will not be handed over.

(3) An offender, who has committed treason or an offence punishable with rigorous imprisonment for a year or more, shall be liable to be apprehended and returned in the manner provided by the Fugitive Offenders Act, 1881.

Intra-territorial trial.

(II) The Courts in India are empowered to try offences committed out of British India either on

(A) Land, or (B) High seas.

Land.

(A) By virtue of ss 3 and 4 of the Penal Code and s. 188 of the Criminal Procedure Code, local Courts can try offences committed outside British India, provided, if there is a Political Agent, for the territory, in which the offence is committed, he certifies that the charge ought to be inquired into in British India. The High Courts, if empowered by the Governor-General in Council, can try offences committed by Christian subjects within the territory of a Native State.

High Seas. Admiralty jurisdiction.

(B) The jurisdiction to try offences committed on the high seas is known as Admiralty jurisdiction. It is founded on the principle that a ship on the high seas is a floating island belonging to the nation whose flag she is flying. It extends over—

(1) Offences committed on British ships. Such offences may be committed—

(*a*) on the high seas or in rivers, below the bridges, where the tide ebbs and flows, and where great ships go; or

(*b*) at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction.

(2) Offences committed on foreign ships in British territorial waters.

(3) Pirates.

The Admiralty jurisdiction does not extend to any river, creek or port within the body of a county. It extends to all persons, British subjects or foreigners, who happen to be on board such ships. With regard to sea-shore the ordinar y criminal Courts and the Courts of admiralty have alternate jurisdiction between high and low water-mark. By virtue of the Admiralty Offences Act of 1849 and the Merchant Shipping Act of 1894, offences on the high seas are triable in India by ordinary criminal Courts as if they were committed within the local jurisdiction of those Courts. Several statutes are passed conferring upon the Indian High Courts the same jurisdiction as is vested in the Admiralty Courts of England. This jurisdiction has also been conferred on mofussil Courts by the Merchant Shipping Act of 1894.

The High Courts of Bombay, Calcutta and Madras have the same Admiralty jurisdiction as that of the late Supreme Courts. The jurisdiction of the Supreme Courts was that of the High Court of Admiralty in England as it stood in 1823. Under Act XVI of 1891, the High Courts of Bengal, Madras and Bombay are declared to be Colonial Courts of Admiralty within the meaning of Statute 53 & 54 Vic. c. 27, and they now have the same jurisdiction as the Admiralty Courts of England. The offences which come within the Admiralty jurisdiction are defined by the Merchant Shipping Act, 1894.

Admiralty jurisdiction was vested in the mofussil Courts by 12 & 13 Vic. c. 96, and s. 686 of the Merchant Shipping Act,

The *procedure* to be followed in a case where an offence is committed on the high seas is the procedure laid down in the Criminal Procedure Code Formerly such an offence was punished as if it was committed in England. But now by virtue of 37 & 38 Vic. c. 27, the offender shall be liable to such punishment as might have been inflicted upon him if the offence were committed in British India. If the offence is not punishable by the Penal Code, the offender shall be liable to such punishment as shall correspond to the punishment to which he would be liable under the English law. Thus three conditions are essential :—

(1) The offence must be an offence under the English law.

(2) The trial must be conducted under the Code of Criminal Procedure.

(3) The punishment must be regulated by the Penal Code.

Leading cases :—**R. v. Elmstone.**
R. v. Barton.
R. v. Gunning.

British Courts cannot try foreigners who are in India for offences committed by them outside British India.

Laws not affected by the Code.

The Code does not repeal, vary, suspend or affect any provisions of—

(1) the statute 3 & 4 Will. IV. c. 85;

(2) any subsequent Act of Parliament affecting the East India Company, or the said territories, or the inhabitants thereof;

(3) any Act for punishing mutiny and desertion of officers and soldiers;

(4) any special or local law **(s. 5)**.

An offence expressly made punishable by a special or local law will be punishable under the Code. But if the Legislature in framing the special or local law intended to exclude the operation of the Code, no prosecution under the Code is admissible. However, a person cannot be punished both under the Code and special law for the same offence.

Chap. II. General Explanations.

In Chapter II the leading terms used in the Code are defined and explained and the meanings thus announced are steadily adhered to throughout the subsequent Chapters.

Act includes an illegal omission save where the contrary appears from the context. Where the causing of an effect is an offence if it is caused either by an act or by omission, the causing of that effect partly by an act or partly by an omission will be the same offence **(s. 36)**. When an offence is committed by several acts, each person intentionally committing one of those acts, either singly or jointly with others, commits the offence **(s. 37)**.

Joint-offenders.

Where a criminal act is committed jointly by several persons the following principles will apply :—

1. When the act is done *in furtherance of the common intention* of all, each of such persons is liable for it in the same manner as if it were done by him alone **(s. 34)**.

Mere presence does not raise a presumption of complicity. A person not cognizant of the intention of his companion to commit murder is not liable, though in his company, to do an unlawful act.

2. When the act is only criminal by reason of its being done with a criminal knowledge or intention, each is liable only to the extent of his own knowledge or intention (s. 35).

A person assisting the accused who actually performs the act must be shown to have the particular intent or knowledge. If an act which is an offence, without reference to any criminal knowledge or intention on the part of the doer, is done by several persons, each of them is liable for the offence.

3. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act (s. 38).

Section 34 deals with acts done with a common intention, s. 38, with different intentions.

Punishments. Ch. III.

The punishments to which offenders are liable are—

1. Death.
2. Transportation.
3. Penal servitude.
4. Imprisonment.
   (1) rigorous (*i. e.*, with hard labour);
   (2) simple;
   (3) solitary.
5. Forfeiture of
   (1) all property;
   (2) income;
   (3) specific property.
6. Fine (s. 53).

In addition to these the punishment of whipping is added by Act IV of 1909, and of detention in Reformatories in the case of juvenile offenders under Act VIII of 1897.

Death.

1. Sentence of death may be commuted without the consent of the offender by the Government of India or the Local Government for any other punishment (s. 54). The punishment of death may be awarded in the following cases :—

(1) Waging war against the King (s. 121).

(2) Abetting mutiny actually committed (s. 132).

(3) Giving or fabricating false evidence upon which an innocent person suffers death (s. 194).

(4) Murder (s. 302).

(5) Abetment of suicide of a minor, or an insane or an intoxicated person (s. 305).

(6) Attempt to murder by a person under sentence of transportation, if hurt is caused (s. 307).

(7) Dacoity accompanied with murder (s. 396).

Sentence of death must be awarded where a person who is under sentence of transportation for life commits murder (s. 303).

Transportation.

2. The Government can commute, without the consent of the offender, a sentence of transportation for life to imprisonment not exceeding fourteen years (s. 55). In calculating fractions, transportation for life shall be reckoned as equivalent to twenty years (s. 57). Offenders sentenced to transportation are dealt with in the same manner as if sentenced to rigorous imprisonment, until they are transported (s. 58).

Where an offender is punishable with imprisonment for seven years or upwards, transportation for not less than seven years and not exceeding the term for which he is liable to imprisonment may be substituted (s. 59). This provision enables a Court to substitute a sentence of transportation for that of imprisonment. It does not give power to a Court which could not pass a sentence of imprisonment for seven years or upwards. Such sentence cannot be made up by amalgamating two or more sentences together. The punishment awarded for one offence alone must be imprisonment for seven years at least. This section does not apply to sentences under a special or local law.

Transportation for life must be inflicted

(1) for unlawful return from transportation (s. 226). and

(2) for being a 'thug' (s. 311).

Penal servitude.

3. Europeans and Americans committing offences punishable with transportation or with imprisonment for long terms shall be sentenced to penal servitude according to the Penal Servitude Act (XXIV of 1855). But where such persons would, but for this Act, be liable to be transported for a term exceeding ten years (not life), they shall be liable to be kept in penal servitude for a term exceeding seven years (s. 56)

'Penal servitude' consists in keeping an offender in confinement and compelling him to hard labour.

4. The maximum period of imprisonment is fourteen years (s. 55); and the lowest actually named for a given offence, *viz.*, misconduct by a drunken person, is twenty-four hours (s. 510); but the minimum is unlimited except in two cases:—

Imprisonment.

(1) If at the time of committing robbery or dacoity the offender uses deadly weapon or causes hurt, or

(2) if while committing this offence he is armed with a deadly weapon;

he shall be punished with imprisonment for not less than seven years (ss. 397 and 398).

Sentence of imprisonment may be in certain cases wholly or partly rigorous or simple (s. 60). But in three cases the imprisonment shall be rigorous:—

(1) Giving or fabricating false evidence with intent to procure conviction of a capital offence (s. 194).

(2) Unlawful return from transportation (s. 226).

(3) House-trespass to commit an offence punishable with death (s. 449).

There are twelve offences that are punishable with simple imprisonment only: see pages 35, 36.

Solitary confinement may be inflicted for offences punishable with rigorous imprisonment. The offender may be kept in solitary confinement for any portion or portions of his term of imprisonment, not exceeding *three* months in the whole. But the solitary confinement must not exceed—

Solitary confinement.

One month, if the term of imprisonment shall not exceed six months.

Two months, if the term of imprisonment shall exceed six months and shall not exceed one year.

Three months, if the term of imprisonment shall exceed one year (s. 73).

In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such period: and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded with intervals between the periods of solitary confinement of not less duration than such period (s. 74).

A sentence of solitary confinement for more than three months is not passed even if a person is convicted at one trial

of more than one offence. Such confinement is awarded for offences under the Code only. Even then it cannot be awarded where imprisonment is not part of the sentence or where the imprisonment is in lieu of fine. It may be awarded in a summary trial. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than fourteen days is awarded.

Forfeiture.

5. This punishment is inflicted only on persons guilty of high political offences. Where a person is convicted of an offence for which he is liable to forfeiture of *all* his property, he shall be incapable of acquiring any property, except for the benefit of the Government, until he shall have undergone the punishment (s. 61).

Forfeiture is of three kinds :—

I. Absolute forfeiture of all property of the offender. This takes place in the following cases :—

(1) The offence of waging, or attempting to wage war, or abetting the waging of war against the King-Emperor (s. 121).

(2) The offence of collecting men, or ammunition for, or otherwise preparing to wage such war (s 122).

(3) Any person convicted of an offence punishable with death (s. 62).

Under ss. 121 and 122 the accused shall forfeit all his property; under s. 62 the Court may adjudge forfeiture.

II. Forfeiture of rents and profits during the term of transportation or imprisonment. Whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estates during the period of his transportation or imprisonment, shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period (s. 62).

This section is ordinarily applied in cases of crimes against the State or affecting the safety of the public generally.

III. Forfeiture of specific property—

(1) Whoever commits, or prepares to commit, depradation on the territories of any power at peace with the king-

Emperor shall be liable, in addition to other punishments, to forfeiture of any property used, or intended to be used, in such depradation, or acquired thereby (s. 126).

(2) Whoever knowingly receives property taken as above mentioned or in waging war against any Asiatic power at peace with the King-Emperor shall forfeit such property (s. 127).

(3) A public servant, who improperly purchases property, which, by virtue of his office, he is legally prohibited from purchasing, forfeits such property (s. 169).

Fine is awarded as a sentence by itself in the following cases:

6. (1) A person, in charge of a merchant vessel, negligently allowing a deserter from the Army or Navy to obtain concealment in such vessel is liable to a fine not exceeding Rs. 500 (s. 137).

(2) The owner or occupier of land, on which a riot or an unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with fine not exceeding Rs. 1,000 (s. 154).

(3) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (s. 155).

(4) The agent or manager of such person under like circumstances (s. 156).

(5) Committing of a public nuisance not otherwise punishable is punishable with fine not exceeding Rs. 200 (s. 290).

(6) Voluntarily vitiating the atmosphere so as to render it noxious to the public health is punishable with fine of Rs. 500 (s. 278).

(7) Obstructing a public way or line of navigation is punishable with fine not exceeding Rs. 200 (s. 283).

(8) Whoever publishes any proposal to pay any sum or to deliver any goods, or to do or forbear doing any thing for the benefit of any person, or any event or contingency relative or applicable to the drawing of a ticket, lot, number, or figure, in any such lottery, unless authorised by Government, shall be punished with fine not exceeding Rs. 1,000 (s. 294-A).

Imprisonment in default of fine.

The following provisions regulate the character and duration of the sentence of imprisonment in default of payment of fine:—

Where an offender is sentenced to a fine, the Court may direct that the offender shall in default of payment suffer a term of imprisonment, which imprisonment may be in excess of any other imprisonment to which he may have been sentenced for the offence, or to which he may be liable under a commutation of sentence (s. 64).

If the offence be punishable with *imprisonment as well as fine* such imprisonment shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence (s. 65); such extra imprisonment may be of any description to which the offender might have been sentenced for the offence (s 66).

When the offence is punishable with *fine only* such imprisonment shall not exceed

two months when the amount of the fine shall not exceed fifty rupees;

four months when the amount shall not exceed one hundred rupees, and for

any term not exceeding six months in any other case (s. 67).

The imprisonment in such cases must be simple only.

Such imprisonment shall terminate

(1) upon payment of the fine (s. 68); or

(2) before the expiration of the term of imprisonment fixed in default of payment, if such a proportion of the fine be paid, or levied, that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid (s. 69).

Fine may be levied within six years, or at any time during the term of imprisonment if it be longer than six years, and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts (s. 70).

An offender who has undergone full term of imprisonment inflicted in default of payment of fine is still liable for the amount of fine. In a Bombay case it is laid down that *moveable* property of the offender can alone be distrained and sold for the recovery of fine. But in a Calcutta case it is held that a suit can be brought to recover fine by the sale of *immoveable* property of the offender.

Whipping.

7. The punishment of whipping is added by the Whipping Act (IV of 1909) as an alternative or additional punishment for certain offences.

The Government may commute a sentence of

Commutation of sentence.

(1) *death*, for any other punishment;

(2) *transportation for life*, for imprisonment for not more than fourteen years (ss. 54, 55);

(3) *penal servitude*, for transportation in the case of Europeans or Americans (s. 56);

(4) *imprisonment*, for transportation where the imprisonment awarded is for seven years or more (s 59).

The Government may commute without the offender's consent sentences in cases of *death* and *transportation for life.*

Limit of punishment of offence made up of several offences.

(1) Where an offence is made of parts, each of which constitutes an offence, the offender shall not be punished for more than one unless expressly provided.

(2) Where an offence falls within two or more separate definitions of offences; or where several acts of which one or more than one would, by itself or themselves, constitute an offence, constitute when combined a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences (s. 71).

The combination of section 235, Criminal Procedure Code, with this section results in four propositions enumerated at pp. 46 and 47.

Doubt as to nature of offence.

Where it is doubtful of which of the several offences a person is guilty, he shall be punished for the offences for which the lowest imprisonment is provided (s. 72).

A person convicted (*a*) by a British Indian Court or (*b*) by a Court in a Native State acting under the authority of the Local Government or Government of India of an offence,

Previous conviction.

(*a*) relating to Coin and Government Stamps (Ch. XII), or

(*b*) against property (Ch. XVII)

punishable with imprisonment for a term of *three* years or upwards;

shall be subject to transportation for life, or to imprisonment for ten years, if he is again guilty of any offence punishable under either of those Chapters with like imprisonment for the like term (s. 75).

The ofiender is subjected to increased punishment on the ground that the punishment undergone has had no effect in preventing a repetition of the crime. The subsequent offenc e must also be punishable with not less than *three* years' imprisonment. If the subsequent offence is committed by a person *previously* to his being convicted of the first offence he cannot be subjected to enhanced punishment. Attempts not specially made offences within Chapters XII and XVII will not be governed by this provision. The previous conviction of an accused for an offence under these Chapters cannot be taken into consideration at a subsequent conviction for abetment of an offence under those Chapters.

General Exceptions. Ch. IV. The following acts are not offences under the Code :—

1. Act of a person bound by law to do a certain thing (s. 76).

2. Act of a Judge acting judicially (s. 77).

3. Act done pursuant to an order or a judgment of a Court (s. 78).

4. Act of a person justified, or believing himself justified, by law (s. 79).

5. Act caused by accident (s. 80).

6. Act likely to cause harm done without criminal intent to prevent other harm (s. 81).

7. Act of a child under 7 years (s. 82.)

8. Act of a child above 7 and under 12 years but of immature understanding (s. 83).

9. Act of a person of unsound mind (s. 84).

10. Act of an intoxicated person (s. 85).

11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (s. 87).

12. Act not intended to cause death done by consent of sufferer (s. 88).

13. Act done in good faith for the benefit of a child or an insane person or by the consent of the guardian (s. 89).

14. Act done in good faith for the benefit of a person without consent (s. 92).

15. Communication made in good faith to a person for his benefit (s. 93).

16. Act done under threat of death (s. 94).

17. Acts causing slight harm (s. 95).

18. Acts done in private defence (ss. 96—106).

1. Act done by a person bound, or by mistake of fact believing himself bound, by law (s. 76).

The maxim *respondeat superior* has no application to cases where an offence is committed by a subordinate official acting under the orders of his superior. The official is bound to exercise his own judgment and unless the actual circumstances are of such a character that he may have reasonably entertained the belief that the order was one which he was bound to obey, he will be responsible for his act.

Leading case :—R. v. Latifkhan.

2. Act of a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (s. 77).

A Judge will be protected where he is acting judicially and not ministerially. If he act without *jurisdiction* and without *good faith* he would be responsible.

3. Act done pursuant to the judgment or order of a Court of justice while such judgment or order remains in force, and the person doing the act in good faith believes that the Court has jurisdiction although it has not (s. 78). This section differs from the preceding section on the question of jurisdiction. It protects officers acting under the authority of a judgment or order of a Court even though the Court has no jurisdiction provided the officer believed in good faith that the Court had jurisdiction.

4. Act done by a person justified by law, or who by reason of a mistake of fact, and not by reason of a mistake of law in good faith believes himself to be justified by law to do it (s. 79).

Mistake is a slip made by chance. It is not mere forgetfulness. Under ss. 76 and 79 it should be one of fact and not of law. An honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act, is a good defence. An alleged offender is deemed to have acted under that state of facts which he, in good faith and on reasonable grounds, believed to exist when he did the act alleged to be an offence. *Ignorantia facti* doth excuse, for such an ignorance many times makes the act itself morally involuntary. But if an act is clearly a wrong in itself, and a

person, under a mistaken impression as to facts which render it criminal, commits the act, then he will be guilty of an offence.

Mistake of law is no defence. Because every person of the age of discretion is bound to know the law, and presumed so to do. If a person infringes the statute law of the country through ignorance or carlessness he abides by the consequences of his error. The maxim *ignorantia juris non excusat* admits of no exception in its application to criminal offences. Even a foreigner who cannot reasonably be supposed in fact to know the law of the land is not exempted. Similarly, ignorance of a statute newly passed will not save a person from punishment.

Leading cases:—**R. v. Prince.**
R. v. Tolson.
R. v. Esop.
Bhawoo v. Mulji.

Mayne deduces the following five rules, showing the extent to which ignorance of an essential fact may be pleaded as a defence, from the judgments in *Prince's case.*

(*a*) Where an act is in itself plainly criminal, and is more severly punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence.

(*b*) Where an act is *prima facie* innocent and proper, unless certain circumstances co-exist, then ignorance of such circumstances is an answer to the charge.

(*c*) Even in the last named case, the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstance which alters the character of the act, or to a belief in its non-existence.

(*d*) Where an act which is itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime.

(*e*) Where a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the particular statute whether the responsibility of ascertaining that the circumstances exist is thrown upon the person who does the act or not. In the former case his knowledge is immaterial.

5. Accident. This must have been caused

(1) without criminal knowledge or intention,

(2) in the doing of a lawful act,

(3) in a lawful manner,

(4) by lawful means, and

(5) with proper care and caution (s. 80).

An "accident' is something that happens out of the ordinary course of things.

6. Act done with the knowledge that it is likely to cause harm but done in good faith and without any criminal intention to cause harm, for the purpose of preventing, or avoiding, other harm to person or property (s. 81).

It is a maxim of the English law that *actus non facit reum, nisi mens sit rea* (the intent and act must both concur to constitute a crime). A crime is not committed if the mind of the person doing the act in question be innocent. The above maxim has undergone a modification owing to the greater precision of modern statutes. Crimes are now more accurately defined by statutes than before. It has become necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is of the essence of the offences created. In three cases *mens rea* is not an essential ingredient in an offence :

(1) cases not criminal in real sense but which, in the public interest, are prohibited under a penalty ;

(2) public nuisances ; and

(3) cases criminal in form but which are only a summary mode of enforcing a civil right.

The above maxim has little application to offences under the Penal Code because the definitions of various offences expressly contain an ingredient as to the state of mind of the accused. Under the Code, therefore, *mens rea* will mean one thing or another according to a particular offence. The guilty mind may be a dishonest mind, or a fraudulent mind, or a rash or negligent mind and so forth.

It may be observed that criminal law has nothing to do with motives of offenders. Intention is quite different from motive. A person may do an act with a very high and laudable motive but if his act amount to a crime he will be guilty. Where some Hindus removed cows from the possession of some Mahomedans to prevent the cows from being slaughtered, they were held guilty of theft.

Whether a person can for self-preservation inflict harm on others is discussed at page 63. Such acts will not exempt the offender from the full severity of law. It is murder to kill another to save one's own life.

Leading case :—**R. v. Dudley** (or **Mignonette case**).

7. Act done by a child under *seven* years **(s. 82)**; or by a child above *seven* and under *twelve* years who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct **(s. 83)**.

According to English law an infant between the age of *seven* and *fourteen* is presumed to be *doli incapax*. A boy of fourteen is presumed to be physically incapable of committing rape.

8. Act done by a person who, at the time of doing it, by reason of *unsoundness of mind*, is

(1) incapable of knowing the nature of the act, or

(2) that he is doing what is either wrong or contrary to law **(s. 84)**.

The 'unsoundness of mind' may be temporary or permanent, natural or supervening. But it must affect the cognitive faculties of the mind. If the offender is conscious that the act was contrary to law and one which he ought not to do, he is punishable. The act to be dispunishable must be such as would have been excused by law, if the facts had been as he person of unsound mind supposed.

Leading cases :—**R. v. McNaghten.**
R. v. Lakshman.
R. v. Sakharam.

The doctrine of irresistible criminal impulse has not been accepted by the Calcutta High Court.

9. Act done by a person who, at the time of doing it, by reason of intoxication, is

(1) incapable of knowing the nature of the act, or

(2) that he is doing what is *either wrong* or contrary to law;

(3) provided that the thing which *intoxicated* him was administered to him without his knowledge or against his will **(s. 85)**.

If a person *voluntarily* intoxicated commit an offence requiring a particular intent or knowledge, he shall be dealt with as if he had that intent or knowledge **(s. 86)**.

Drunkenness is one thing and the disease to which it leads is a different thing. If a man by drunkenness bring on a state of disease which causes such a degree of madness, even for a time, which would relieve him of responsibility if it had been caused in any other way, then he would not be criminally responsible.

10. *Act not intended, and not known, to be likely to cause death or grievous hurt, done by consent of the person, above eighteen years, to whom harm is caused (s. 87).

Ordinary games such as fencing, boxing, football and the like are protected by this section.

11. Act not intended, and not known, to be likely to cause death, done in good faith by consent of the person to whom harm is caused for his benefit (s. 88).

Surgical operations are protected under this section.

12. Act done in good faith for the benefit of a person under twelve years, or of an insane person, by or by the consent of his guardian. This exception does not extend—

(1) To intentional causing, or attempting to cause, death.

(2) To the doing of anything which the doer knows to be likely to cause death, except to prevent death or grievous hurt, or to cure any grievous disease or infirmity.

(3) To voluntarily causing, or attempting to cause, grievous hurt (except as above.)

(4) To the abetment of any offence, to the committing of which it would not extend (s. 89).

A consent to be a true one must not have been given—

(1) by a person under fear of injury,
(2) by a person under a misconception of fact,
} and the person obtaining the consent knows or has reason to believe this;

(3) by a person of unsound mind,
(4) by a person who is intoxicated,
} and who is unable to understand the nature and consequence of that to which he gives his consent;

(5) by a person under twelve years of age (s. 90).

An honest misconception by both the parties, however, does not invalidate the consent.

Sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause

to the person giving the consent (s. 91). *e. g.* causing miscarriage, public nuisance, offences against public safety, etc.

13. Act done in good faith for the benefit of a person, even without consent, if it is impossible for him to give consent, or is incapable of giving it, and there is no guardian from whom it is possible to obtain it in time for the thing to be done with benefit (s. 92). This exception is subject to the same provisos as s. 89, with the difference that it will not extend to causing hurt except to prevent death or hurt.

14. A communication made in good faith, although causing harm to the person to whom it is made, if it is for his benefit (s. 93) *e. g.* communication in good-faith by a surgeon to a patient that in his opinion he cannot live.

15. Act (except (*a*) murder and (*b*) offence against the State punishable with death) done under threats which at the time of doing it, reasonably cause the apprehension of instant *death*; provided the doer did not of his own accord, or from an apprehension of harm short of death, place himself in the situation by which he became subject to such constraint (s. 94). Fear of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

No one can plead the excuse of necessity or compulsion as a defence to an act otherwise penal except as provided by this section.

Leading cases :—**R. v. Deoji.**
R. v. Latifkhan.
R. v. Maganlal.

The Penal Code does not recognise the archaic English doctrine of marital compulsion.

16. Act causing such a slight harm that no person of ordinary sense and temper would complain of it (s. 95).

This section deals with those cases which come within the letter of the penal law but not within its spirit. It is based on the maxim *de minimis non curat lex* (the law does not take account of trifles).

17. Act done in the exercise of the right of private defence (s. 96).

Private defence. Every person has a right, subject to certain restrictions, to defend—

(1) His own body and the body of any other person against any offence affecting the human body.

(2) The property, whether moveable or immoveable, of himself or of any other person, against any act, which is an

offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit any of such offences (s. 97).

(3) Against an act, which would otherwise be a certain offence, but is not that offence, by reason of the doer being of unsound mind, a minor, an intoxicated person, or a person acting under a misconception of fact (s. 98).

Exceptions to the right of defence.

There is no right of private defence against the following acts :—

(1) An act which does not reasonably cause apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law,

(2) Same as above if done by the directions of a public servant,

(3) Cases in which there is time to have recourse to the protection of the public authorities (s 99).

The right of defence does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence (*ibid*).

Defences of body.

The right of private defence of the body extends to the causing of death or any other harm to the assailant under the following circumstances :—

(1) An assault causing reasonable apprehension of death. In this case if the defender be so situated that he cannot exercise the right without risk of harm to an innocent person, he may even run that risk (s. 106).

(2) An assault causing reasonable apprehension of grievous hurt.

(3) An assault with the intention of committing rape ;

(4) An assault with the intention of gratifying unnatural lust.

(5) An assault with the intention of kidnapping or abducting.

(6) An asasult with the intention of wrongfully confining a person under circumstances which may cause him to apprehend that he will be unable to have recourse to the public authorities for his release (s. 100).

Subject to the above restrictions, the right of private defence of body extends to the causing of any harm short of death (s 101).

It commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues (s. 102).

Defence of property.

The right of private defence of property extends to the causing of death or any other harm to the assailant under the following circumstances:—

(1) Robbery.

(2) House-breaking by night.

(3) Mischief by fire to building, tent, or vessel, used a a human dwelling or for the custody of property.

(4) Theft, mischief, or house trespass reasonably causing the apprehension of death or grievous hurt (s. 103).

Subject to the above restrictions, the right of private defence of property extends to causing of any harm short of death (s. 104). It commences when a reasonable apprehension of danger to the property commences and continues against—

(1) Theft, till

(a) the offender has effected his retreat with the property, or

(b) the assistance of the public authorities is obtained, or

(c) the property has been recovered.

(2) Robbery, as long as

(a) the offender causes or attempts to cause to any per on death, or hurt or wrongful restraint, or

(b) the fear of instant death, or of instant hurt, or of instant personal restraint continues.

(3) Criminal trespass or mischief, as long as the offender continues in the commission of criminal trespass, or mischief.

(4) House-breaking by night, as long as the house-trespass, which has been begun by such house-breaking, continues.

Abetment. Ch. V

There are three kinds of abetment dealt with in the Code. A person abets the doing of a thing, who

(1) Instigates any person to do that thing; or

(2) Engages with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or

illegal omission takes place in pursuance of the conspiracy, and in order to the doing of that thing; or

(3) Intentionally aids, by any act or illegal omission, the doing of that thing.

A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing (expln. 1).

An abettor is a person who abets

(*a*) the commission of an offence, or

(*b*) the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor (s. 108).

It should be noted that—

(1) Abetment of an illegal omission may amount to an offence (*ib.*, expln. 1).

(2) It is not necessary that the act abetted should be committed (*ib.*, expln. 2).

(3) The person abetted need not be capable of committing an offence, nor have any guilty intention or knowledge (*ib.*, expln. 3).

(4) The abetment of an abetment is an offence (*ib.*, expln. 4).

(5) It is not necessary in abetment by conspiracy that the abettor should concert the offence with the person abetted (*ib.*, expln. 5).

(6) A person will be guilty of abetment who abets the commission of any act *without* and *beyond* British India which would constitute an offence if committed in British India (s. 108-A).

If the act abetted is committed but no express provision is made for its punishment, then it shall be punished with the punishment provided for the offence abetted (s. 109).

If a person abetted does the act with a different intention or knowledge from that of the abettor, the latter will be punished as if the offence had been done with his intention or knowledge (s. 110). The liability of the person abetted is not affected by this section.

If the act done is different from the one abetted, the abettor is still liable for it, if it is a probable consequence of the abetment, and committed under the influence of the abetment (s. 111). The liability is the same where the effect

produced is different from that intended by the abettor (s. 113).

The abettor will be liable to cumulative punishment for the act abetted and for the act done if the latter is a distinct offence (s. 112).

If the abettor is present when the offence abetted is committed, he shall be deemed to have committed such act or offence (s. 114).

Mere presence will not render a person liable. He must be sufficiently near to give assistance, and he must participate in the act, no matter whether he is an eye-witness to the transaction or not. Presence during the whole transaction is not necessary.

If an offence punishable with death or transportation is abetted and no express provision is made for the punishment of such abetment, then the offender will be punished with imprisonment extending to seven years if the offence is not committed; but if an act causing harm is done in consequence, the imprisonment shall be extended to fourteen years (s. 115). If in such case tho offence is punishable with imprisonment, then the offender shall be punishable with imprisonment which may extend to one-fourth part of the longest term provided for that offence (s. 116). If in the above case the abettor or person abetted be a public servant whose duty it is to prevent such offence, the imprisonment may extend to one-half of the longest term provided for the offence (*ibid*).

Abetting commission of an offence by the public or by more than ten persons is punishable with imprisonment extending to three years (s. 117).

There are three sections which punish concealment of a design to commit offences by persons other than the accused, *viz.*, ss. 118, 119 and 120.

According to English law criminals are divided into four classes:—

(1) Principal in the first degree: one who is the actual perpetrator of the crime.

(2) Principal in the second degree: one by whom the actual perpetrator of the crime is aided and abetted at the very time when it is committed.

(3) Accessory before the fact: one who being absent at the time when the felony is committed, yet procures, counsels, commands, or abets another to commit a felony.

(4) Accessory after the fact: one who, knowing a felony to have been committed by another, receives, relieves, comforts, assists, harbours, or maintains, the felon. There is no distinction between 'principal in the first degree' and 'principal in the second degree' in the Code. 'Accessory after the fact' is treated in scattered sections. See provisions relating to harbouring, ss. 130, 136, 137, 212, 216, 410, 414.

Criminal conspi-racy. Ch. VA.

Criminal conspiracy is now made a substantive offence under the Code. It was hitherto punishable only as a species of abetment. It arises when two or more persons agree to do or cause to be done—

(*a*) an illegal act; or

(*b*) an act which is not illegal by illegal means.

Such an agreement may be to commit an offence. But if it is not, it is necessary that some overt act besides the agreement is done by one or more parties to such agreement in pursuance thereof (**s. 120-A**). If the offence conspired to is punishable with death, transportation or rigorous imprisonment for two years or upwards, the offender is punishable as an abettor: but in any other case, he is liable to be punished with rigorous imprisonment for six months, or fine or both (**s. 120-B**).

Offences against the State. Ch. VI.

Offences against the State may be classified as follows:—

I. Waging war against the King.
II. Assaulting high officers.
III. Sedition.
IV. Waging war against a power at peace with the King.

I. Waging war against the King.—

1. Waging or attempting to wage war, or abetting waging of war (**s. 121**).

2. Conspiring to commit, within or without British India, offences punishable by s. 121 (**s. 121-A**).

3. Collecting men, arms, or ammunition or making any other preparation with a view to waging such war (**s. 122**).

4. Concealing with intent to facilitate a design to wage such war by any act or illegal omission (**s. 123**).

II. Assaulting Governor-General, or Governor or Lieutenant-Governor, or Member of Council, with intent to compel or restrain the exercise of any lawful power (**s. 124**).

Sedition. III. A person commits sedition who,

(1) by words (spoken or written), or by visible representation,

(2) brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards

(3) His Majesty or the Government (s. 124-A).

It should be noted that—

(1) "Disaffection" includes disloyalty and feelings of enmity (*ib*, expln. 1).

(2) Comments expressing disapprobation of the measures of Government to obtain their alteration, without exciting hatred, contempt, or disaffection, do not constitute this offence (*ib.*, expln. 2).

(3) Comments expressing disapprobation of the administrative action of Government, without exciting hatred, contempt or disaffection, do not constitute this offence (*ib.*, expln. 3).

Any one who uses in any way words or printed matter for the purpose of exciting disaffection, be he the writer of those words or not, is liable. Publication of some kind is necessary. The successful exciting of feelings of disaffecttion is placed on the same footing as the unsuccessful attempt to excite them.

The law does not excuse the publication in newspapers of seditious writings copied from other papers. The editor of a paper is liable for unsigned seditious letters appearing in the paper.

Leading cases :—**R. v Bal Gangadhar Tilak**
R v. Jogendra Chander Bose (or **Bangobasi case**).

IV. Waging war against a power at peace with the King.

1. Waging or attempting to wage, or abetting the waging of such war against the Government of any Asiatic power at peace with the King (s. 125).

2. Committing, or preparing to commit, depredation on the territories of any power at peace with the King (s. 126.)

3. Receiving any property, knowing the same to have been taken in the commission of any of the offences mentioned in the two last preceding sections (s. 127.)

V. Permitting or aiding the escape of a state prisoner.

1. Public servant voluntarily allowing prisoner of state or war, in his custody, to escape (s. 128).

2. Public servant negligently suffering prisoner of state or war, in his custody, to escape (s. 129).

3. Aiding the escape, or rescuing, or attempting to rescue or harbouring, or concealing or resisting the recapture, of such prisoner (s. 130).

Army and Navy offences. Ch. VII.

No person, subject to Articles of War, is subject to punishment under this Code for any offence relating to the Army and Navy defined in this Chapter (s. 139.) This Chapter is framed in order that persons, not military, who abet a breach of military discipline, should not be liable under the military penal law but under the Code. The following offences relating to the Army and Navy find place in the Code—

1. Abetting mutiny, or attempting to seduce an officer, a sailor, or a soldier, from his allegiance or duty (s. 131).

2. Abetment of mutiny, if mutiny is committed in consequence (s. 132).

3. Abetment of such an assault by a soldier, or sailor, or his superior officer, when in the execution of his office (s. 133).

4. Abetment of such an assault if the assault is committed (s. 134).

5. Abetment of the desertion of a soldier, or sailor (s. 135).

6. Knowingly harbouring a deserter (s. 136.)

7. Deserter from the Army or Navy of the King concealed on board merchant vessel through negligence of master or person in charge of the vessel though he is ignorant of such concealment (s. 137).

8. Abetment of act of insubordination by a soldier or sailor, the act abetted being actually committed in consequence of the abetment (s. 138).

9. Wearing the garb, or carrying any token resembling any garb or token used by a soldier with the intention that it may be believed that the wearer is a soldier (s. 140). The gist of the offence is the intention of the accused. Merely wearing a soldier's dress without the specific intention is no offence, *e. g.*, actors put on soldier's garb while acting on the stage.

There are five sections in the Code dealing with false personation—

1. Personation of a soldier (s. 140).
2. Personating a public servant (s. 170).
3. Wearing the garb or carrying the token used by a public servant (s. 171).
4. Personation for the purpose of an act or proceeding in a suit or prosecution (s. 205).
5. Personation of a juror or assessor (s. 229).

Public tranquillity. Ch. VIII.

Offences against the public tranquillity hold a middld place between the State offences on tho one hand and crimes against person ane property on the other. They are four:

I. Unlawful assembly. III. Promoting enmity between different classes.
II. Rioting. IV. Affray.

Unlawful assembly.

1. An 'unlawful assembly' is an assembly of five or more persons, if their common object is—

1. To overawe by criminal force
   (a) the Government of India, or
   (b) the Local Government, or
   (c) any public servant in exercise of lawful power.
2. To resist the execution of law or legal process.
3. To commit mischief, criminal trespass, or other offences.
4. By criminal force
   (a) to take or obtain possession of any property, or
   (b) to deprive any person of any incorporeal right, or
   (c) to enforce any right or supposed right.
5. By criminal force to compel any person
   (a) to do what he is not legally bound to do, or
   (b) to omit what he is legally entitled to do (s. 141).

[6 months, or fine, or both. If armed with a deadly weapon two years, or fine, or both] (ss. 143, 144).

The assembly must consist of five or more persons. It is immaterial whether the common object is in their minds when they come together, or whether it occurs to them afterwards. There must be some present and immediate purpose of carrying into effect the common object. A meeting for deliberation only is not an unlawful assembly.

Persons maintaining their own right or supposed right against the aggression of other people do not commit this offence.

An assembly not unlawful when it assembled may subsequently become an unlawful one (expln.). Illegal acts of one or two members do not change the lawful character of an assembly. Similarly a lawful assembly does not become unlawful merely because the members know that their assembly would be opposed and a breach of the peace would be committed.

Whoever, being aware of facts which render an assembly an unlawful one, intentionally joins it, or continues in it, is a member of that assembly (s. 142). Persons may have associated themselves with a mob from perfectly innocent motives, but if the mob becomes an unlawful assembly and they take part in its proceedings, they will be liable Every such member is deemed guilty of an offence committed in prosecution of the common object.

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the member of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence (s. 149). This section prevents the accused from putting forth the defence that he did not with his *own* hand commit the offence committed in prosecution of the common object. Common object does not mean common intention. All will be guilty of any offence done in prosecution of the common object, though there was no common intention to commit the offence as a means to the end. But members of an unlawful assembly may have a community of object only up to a certain point and beyond which they may differ in their objects.

Leading case :—**R. v. Sabedali.**

Other cognate offences—

1. Joining an unlawful assembly armed with a deadly weapon (s. 144).

2. Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (s. 145).

3. Hiring of persons to join an unlawful assembly (s. 150).

4. Harbouring persons hired for an unlawful assembly (s. 157).

5. Being hired to take part in an unlawful assembly (s. 158).

Persons, who are engaged or hired to do any of the acts which make an assembly unlawful, are likewise punished (s. 158).

Riot.

II. When (1) force or violence is used (2) by an unlawful assembly or by any member thereof (3) in prosecution of the common object; every member is guilty of rioting (s. 146). (2 years, or fine, or both). If armed with a deadly weapon, 3 years, or fine, or both (s. 148).

Riot is an unlawful assembly in a particular state of activity. To constitute the offence of rioting it must be proved:

(1) that the accused, being *five* or *more* in number, formed an unlawful assembly;

(2) that they were animated by a common unlawful object;

(3) that force or violence was used by the unlawful assembly or any member of it; and

(4) that such force was used in prosecution of the common object.

If the common object of an assembly is not illegal, it is not rioting even if force is used by a member of it. If persons lawfully assembled for any purpose suddenly quarrel they do not commit riot.

The Penal Code does not deal with *rout*, an offence known to English law. A *rout* is an unlawful assembly of three or more persons, which has made a motion towards executing the common object. According to English law riot is committed where *three* or *more* persons carry out their object, lawful or unlawful, in a violent and tumultuous manner.

Other cognate offences.—

1. Rioting with deadly weapons (s. 148).

2. Assaulting or obstructing a public servant in the suppression of a riot (s. 152).

3. Malignantly or wantonly giving provocation with intent to cause riot (s. 153).

4. Liability of persons who own, occupy, or have an interest in land is governed by the following provisions:

(1) The owner, or any person having or claiming an interest in land upon which an unlawful assembly is held, or riot committed, is punishable with Rs. 1,000 fine, if he or

his agent (*a*) knowing of the offence do not give the earliest notice thereof at the nearest police station; or (*b*) believing the offence likely to be committed do not use any lawfnl means to prevent it; or (*c*) in the event of the offence taking place do not use all lawful means to disperse or suppress the riot (s. 154).

(2) Where a riot is committed on behalf of a person who is the owner or occupier of land respecting which such riot takes place, or who claims any interest in such land, or is the subject of any dispute which caused the riot, such person is liable to a fine, if he or his agent having reason to believe the riot is likely to be committed, or the unlawful assembly causing the riot is likely to be held, fails to use all lawful means for preventing the riot, or for suppressing and dispersing the same (s. 155).

Under similar circumstances, the agent or manager is punishable likewise (s. 156).

III. Promoting enmity or hatred between different classes of people by words, or by signs or by visible representations, or otherwise (s. 153-A). (2 years, or fine, or both).

Affray.

IV. When (1) two or more persons, (2) by fighting in a public place, (3) distrub the public peace, they commit an affray (s. 159). (1 month, or Rs. 100, or both) (s. 160).

The word 'affray' is derived from the French word *affaraier*, to terrify. (An 'affray' is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance. 'Public place' is a place where the public go, no matter whether they have a right to go or not. No quarrelsome or threatening words will amount to an affray.

An 'affray' differs from a 'riot:'

(1) An affray cannot be committed in a private place, a riot can be.

(2) An affray is committed by *two* or *more* persons, a riot by *five* or *more.*

(3) A riot is more severely punishable than an affray.

Persons other than the actual rioters are punishable in respect of riot in the following cases:—

(1) Owner, or occupier of land on which an unlawful assembly is held (s. 154).

(2) The person for whose benefit a riot is committed (s. 155).

(3) The agent of owner or occupier for whose benefit a riot is committed (s. 156).

(4) One who knowingly harbours, in any house or premises under his control, any persons being or about to be hired or employed as members of an unlawful assembly (s. 157).

(5) One who is engaged or hired or offers to be hired to do or assist in doing any of the acts specified in s. 141, as making an assembly unlawful (s. 158).

Offences by or relating to public servants. Ch. IX.

Chapter IX deals with offences by or relating to public servants. They are as follows:—

1. Whoever being, or expecting to be, a public servant

(i) accepts or obtains, or agrees to accept, or attempts to obtain any *gratification other than legal remuneration*,

(ii) as a reward for

(*a*) doing or forbearing to do any official act, or

(*b*) showing or forbearing to show favour or disfavour to any person in the exercise of his official functions, or

(*c*) rendering or attempting to render any service or disservice to any person, with the Government of India or local Government, or a public servant

is guilty of taking gratification (s. 161). (3 years, or fine, or both).

2. Taking a gratification in order by corrupt or illegal means to influence a public servant (s. 162). (3 years, or fine, or both).

3. Taking a gratification for the exercise of personal influence with a public servant (s. 163). (1 year's simple imprisonment, or fine, or both).

4. Public servant abetting either of the two last mentioned offences (s. 164).

5. Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant (s. 165).

6. Public servant knowingly disobeying law with intent to cause injury to any person (s. 166).

7. Public servant framing or translating a document in a way which he knows or believes to be incorrect, intending to cause injury to any person (s. 167).

8. Public servant unlawfully engaging in trade (s. 168).

9. Public servant unlawfully buying or bidding for property (s. 169).

10. Personating a public servant, and doing or attempting to do an act in such assumed character under colour of office (s. 170).

11. Wearing a garb or carrying a token used by a public servant with fraudulent intent (s. 171).

Contempt of the authority of public servants. Ch. X.

Chapter X deals with contempt of the lawful authority of public servants. It contains those provisions which are intended to enforce obedience to the lawful authority of public servants.

The following provisions relate to wilful omission or evasion of the performance of a public duty—

1. Absconding to avoid service of a summons, notice, order, or other proceeding from a public servant (s. 172).

'Absconding' here means simply hiding. The section does not speak of a warrant.

2. Preventing service of summons or other proceeding, or removing the same from any place to which it is lawfully affixed, or preventing the making of any proclamation under due authority or publication thereof (s. 173).

3. Non-attendance, in obedience to a summons, notice, order, or proclamation proceeding from a public servant, in person or by agent, or having attended departing before it is lawful to depart (s. 174).

The attendance must be in a place in British India. The summons should be specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when the attendance is required. A verbal order is quite sufficient. Mere affixing of summons to a house is not enough; personal service must be attempted.

4. Intentional omission to produce or deliver up any document to a public servant by a person legally bound to produce such document (s. 175).

5. Intentional omission to give, or furnish, at the time and in the manner aforesaid by law, any notice or information to a public servant (s. 176).

6. Section 202, though not appearing in this Chapter, punishes intentional omission to give information of offence by person bound to inform.

7. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (s. 187).

A person refusing to give true information to a public servant will be liable under the following circumstances:—

1. Refusing an oath or affirmation to state the truth when required by a public servant legally competent to require it (s. 178).

2. Refusing, by a person *legally bound* to state the truth, to answer any question, demanded of him by a public servant authorized to question (s. 179).

A person examined under s. 161 of the Criminal Procedure Code is not legally bound to state the truth.

3. Refusing to sign any statement made by the party refusing to sign, when required by a public servant legally competent to require that he shall sign it (s. 180).

A person giving false information to a public servant is liable in the following cases:—

1. Furnishing, as true, information which the person furnishing same being legally bound to furnish, knows or has reason to believe to be false. (6 months' simple imprisonment, Rs. 1,000 fine). If the information respects the commission of an offence, or prevention of it, or the apprehension of the offender—two years' imprisonment, or fine (s. 177).

2. False statement on oath to a public servant, or person *authorised* to administor oath, by a person legally bound to stato the truth on the subject in question (s. 181).

This section refers to cases in which the false statement is made to any public servant in proceedings *other than* judicial. Section 191 refers to judicial proceedings.

3. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(*a*) to do or omit to do anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person (s. 182).

4. Section 203, though not appearing in this Chapter, punishes the giving of false information respecting an offence.

The following provisions deal with obstructing or disobeying a public servant:

1. Resistanec to the taking of the property by the lawful authority of a public servant (s. 183).

2. Obstructing the sale of property offered for sale by the lawful authority of a public servant (s. 184).

3. Illegal purchase or bid for property offered for sale by the authority of a public servant, on account of any person, whether himself or any other, who is under a legal incapacity to purchase that property at such sale, or bid for such property not intending to perform the obligations thereby incurred (s. 185).

4. Obstructing a public servant in the discharge of his public functions (s. 186).

5. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (s. 187).

6. Knowingly disobeying an order promulgated by a public servant lawfully empowered to promulgate it (s. 188). (If such disobedience tends to cause obstruction or injury to any person lawfully employed, then the punishment is simple imprisonment for one month, or Rs. 200 fine, or both. If it cause riot or affray, or danger to human life, health or safety, then with imprisonment of either decription for six months, or Rs. 1,000 fine, or both.)

Three things are necessary—

(1) A *lawful* order promulgated by a public servant;

(2) *knowledge* of the order and disobedience of it; and

(3) the *result* that is likely to follow from the disobedience.

7. Threat, or injury to a public servant, or to any person in whom such public servant is believed to be interested, in order to induce such public servant to do or refrain from doing an official act (s 189).

8. Threat or injury to induce any person to refrain from applying for protection to a public servant (s. 190).

Chapter XI treats of offences relating to false evidence and public justice.

A person is said to give 'false evidence' if he

False evidence. Ch. XI.

(1) being legally bound by an oath, or by an express provision of law to state the truth, or

(2) being bound by law to make a declaration upon any subject,

(3) makes any statement which is false, and

(4) which he either knows or believes to be false, or does not believe to be true (s. 191).

If the Court has no authority to administer an oath, or if it has no jurisdiction at all, the proceedings will be without jurisdiction. Oath or solemn affirmation is not a condition precedent to this offence. The false statements need not be *material* to the case. It is not limited to evidence before a Court of Justice, but covers any statement made, under oath or otherwise, in pursuance of a legal duty to make it. A person is not bound to tell the truth when questioned by a Police officer under s. 161 (2) of the Criminal Procedure Code. A false allegation in a written statement amounts to this offence. Illegality of a trial does not purge perjury committed in that trial. An accused will not be liable if he gives false answers to questions put by the Court. The English law requires two witnesses to prove perjury, but the Indian law does not.

Fabricating false evidence.

A person is said to 'fabricate false evidence' if he

(1) causes any circumstance to exist, or

(2) makes any false entry in any book or record, or

(3) makes any document containing a false statement,

(4) intending that such *circumstance*, *false entry* or *false statement* may appear in evidence in (*a*) a judicial proceeding, or (*b*) in any proceedings taken by law before a public servant or an arbitrator, and

(5) may cause any person, who in such proceedings is to form an opinion upon the evidence, to entertain an erroneous opinion,

(6) touching any point material to the result of such proceeding (s. 192). (If evidence is given or fabricated for the purpose of being used in any stage of a judicial proceeding, 7 years, and fine; in any other case, 3 years, and fine) (s. 193).

This section refers to judicial proceedings. Section 181 refers to any proceedings before a public servant. The definition of "judicial proceeding" in the Criminal Procedure Code is not applicable to ss. 192 and 193.

Intention is the gist of the offence of fabricating false evidence.

The false evidence must be *material* to the case, though it may not be so under s. 191. If no erroneous opinion

could be formed touching any point material to the result of a proceeding there will be no fabrication.

As soon as the false evidence is *fabricated* the offence is complete. Actual *use* of such evidence is not necessary. Such use is punishable under s. 196. The fabricated evidence must, however, be admissible evidence. The offence cannot be committed before a public servant not authorised to hold an investigation.

Where a person makes two contradictory statements he can be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of those contradictory statements is false.

Persons accused of giving or fabricating false evidence should be tried separately and *not* jointly.

An accused who fabricates evidence to escape punishment is not liable under this section, unless he contemplates injury to some one else.

The aggravated forms of these two offences are—

1. Giving or fabricating false evidence with intent to procure conviction of a capital offence (s. 194).

2. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment (s 195).

The following offences are punishable in the same manner as the giving of false evidence :—

1. Issuing or signing any certificate required by law to be given or signed or by law made evidence of any fact knowing or believing that such certificate is false in any material point (s. 197).

2. Using as true a certificate known to be false in a material point (s. 198).

3. False statement made in any declaration which touches any material point and which is by law receivable as evidence (s 199).

4. Using as true any such declaration known to be false in any material point (s. 200).

Destruction or secretion or obliteration of a document to prevent its production in evidence in a Court is punishable (s. 204).

There are two offences in this Chapter dealing with false personation—

Personation.

1. Falsely personating another, and in such assumed character making any admission or statement, or confessing judgment or causing

any process to be issued, or becoming bail or security, or doing any other act in any suit or prosecution (s. 205).

Any fraudulent gain or benefit to the offender is not necessary.

The Calcutta High Court has held that a person commits this offence even if he personates a purely imaginary person. The Madras High Court following English precedents has held to the contrary.

2. Personating a juror or assessor (s. 229).

The following provisions deal with the abuse of process of Courts :—

1. Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree (s. 206).

Abuse of process of Courts.

2. Fraudulent claim to property to prevent its seizure as forfeiture or in execution (s. 207).

3. Fraudulently suffering a decree for a sum not due (s 208).

4. Fraudulently or dishonestly making a false claim in Court (s. 209).

5. Fraudulently obtaining a decree for a sum not due or causing a decree or order to be executed against any person after it has been satisfied (s 210).

The fact that the satisfaction of a decree is of such a nature that the Court executing the decree cannot recognise it, does not prevent the decree-holder from being convicted of this offence.

6. False charge of an offence.

This has four ingredients—

(1) Instituting or causing to be instituted any criminal proceeding, or

(2) falsely charging any person with having committed an offence.

(3) Knowledge that there is no just or lawful ground for it.

(4) Doing as above with intent to cause injury to any person (s. 211). (2 years, or fine, or both. If criminal proceedings be instituted on a false charge of an offence punishable with death, transportation for life, of imprisonment for seven years or upwards, then the punishment is 7 years and fine).

Criminal law may be put in motion

(1) by giving information to the Police, and

(2) by lodging a complaint before a Magistrate.

A false charge to the Police in respect of a *cognizable* offence amounts to institution of criminal proceedings. But as the Police have no power to take any proceedings in *non-cognizable* cases without orders from a Magistrate, a false charge of such offence made to the police is not an institution of criminal proceedings but merely a false charge. No such distinction exists when a false charge of any offence is made before a Magistrate.

Leading cases :—**R.** v. **Karim Buksh.**
R. v. **Jijibhai.**

For false charge of offences of a serious nature severe punishment is provided. According to the CALCUTTA and MADRAS HIGH COURTS in such cases it is not necessary that criminal proceedings should be instituted: the charge should merely relate to a serious offence; whereas the ALLAHABAD HIGH COURT has held that criminal proceedings should have been actually instituted.

Leading cases :—**R.** v. **Karim Buksh** (*Cal.*)
R. v. **Nanjunda Row** (*Mad.*)
R. v. **Bisheshar** (*All.*)

The bringing of a vexatious charge is not an offence under this section. The compounding of the offence alleged to have been committed is no bar to a prosecution under this section. The person aggrieved may sue in a civil Court for damages for malicious prosecution instead of instituting criminal proceedings.

There is a difference between s. 182 and s. 211.

BOMBAY HIGH COURT.—Under s. 182 proof of (1) malice and (2) want of reasonable and probable cause, except so far as they are implied in the act of giving false information, is not necessary; under s. 211 such proof is absolutely required (*Raghvendra* v. *Kashinath*).

CALCUTTA HIGH COURT.—Prosecution for a false charge may be under either of these sections. But if the false charge is of a *serious* nature, s. 211 should be applied.

ALLAHABAD HIGH COURT.—Where a specific false charge is made, the proper section to apply is s. 211. An offence under s. 182 is complete when false information is given to a public servant although the latter takes no steps towards the institution of criminal proceedings.

Screening an offender.

1. Causing disappearance of evidence of an offence or giving false information to screen the offender (s. 201).

An offence should have been actually committed to render a person liable. But an offender himself causing the

disappearance of evidence is not liable. He cannot be convicted of abetment as well.

2. Taking gift to screen an offender from punishment (s. 213).

3. Offering gift or restoration of property in consideration of screening an offender (s. 214).

Taking any gratification on account of helping any person to recover any moveable property of which he shall have been deprived by any offence under this Code is punished unless the person taking gift uses all means in his power to cause the offender to be apprehended (s. 215).

Harbouring an offender.

1. Harbouring or concealing a person knowing him to be an offender with the intention of screening him from legal punishment (s. 212).

2. Harbouring or concealing an offender who has escaped from custody, or whose apprehension has been ordered (s. 216).

3 Knowingly harbouring any persons who are about to commit, or have committed, robbery or dacoity (s. 216-A).

The word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension (s. 216-B).

Offences by public servants.

The following provisions deal with offences against public justice committed by public servants:—

1. Public servant knowingly disobeying a direction of law with intent to save any person from punishment or any property from forfeiture (s. 217).

2. Public servant, charged as such with the preparation of a record or other writing, framing it incorrectly with intent to cause loss or injury to the public or any person, or to save any person from punishment or property from forfeiture (s 218).

3. Public servant in a judicial proceeding corruptly or maliciously making any report, order, verdict, or decision, knowing that it is contrary to law (s 219).

4. Public servant corruptly or maliciously committing any person for trial, or keeping any person in confinement knowing that he is acting contrary to law (s. 220).

5. Public servant intentionally omitting to apprehend, or suffering to escape, any person when legally bound to apprehend or keep him in confinement (s. 221).

6. Same as above, when such person is under sentence or lawfully committed to custody (s. 222).

7. Public servant legally bound to keep in confinement a person charged with, or convicted of, any offence, negligently suffering him to escape (s. 223).

8. Public servant omitting to apprehend or suffering to escape from confinement any person in cases not otherwise provided for (s. 225 A).

Resisting the law is punishable in the following cases:—

1. A person resisting or obstructing the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted; or escaping or attempting to escape from legal custody (s. 224).

2. Resisting or obstructing lawful apprehension of another person for an offence, or rescuing or attempting to rescue him from legal custody (s. 225).

3. Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for (s. 225-B).

There are two sections dealing with transgression of punishment—

1 Unlawful return from transportation (s. 226).

2. Violation of condition of remission of punishment (s. 227).

Contempt of Court.

As to contempt of Court the Code says that a person will be guilty of this offence if he intentionally offers any insult or causes any interruption to any public servant, while he is sitting in any stage of a judicial proceeding (s. 229). (6 months simple imprisonment, or Rs. 1,000, or both).

Coin and stamps. Ch. XII.

Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign power in order to be so used. Old coins not used as money are not coins under this definition.

King's coin is

(1) metal stamped and issued

(2) by the authority of the King, or

(3) by the authority of the Government of India, Government of any Presidency, or of any Government in the King's dominions

(4) in order to be used as money; and

(5) metal which has been so stamped or issued shall

continue to be King's coin notwithstanding that it may have ceased to be used as money (s. 230).

Following are the various offences relating to coin :—

1. Counterfeiting coin or King's coin (ss. 231,232).

2. Making, mending, buying, selling, or disposing of any die or instrument for counterfeiting coin or King's coin (ss. 233,234).

3. Being in the possession of an instrument or a material for the purpose of using the same for counterfeiting coin or King's coin (s. 235).

4. Abetting in India counterfeiting out of India of coin (s 236).

Abetment in British India must be complete.

5. Importing or exporting of a counterfeit coin or King's coin (ss. 237,238).

6. Delivery to another of a coin or King's coin possessed with the knowledge that it is counterfeit (ss. 236,240).

7. Delivery to another of a coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit (s. 241).

8. Possession of a counterfeit coin or King's coin by a person who knew it to be counterfeit when he became possessed thereof (ss. 242,243). Possession must be with intent to defraud.

9. Any person employed in a mint causing a coin to be of a different weight or composition from that fixed by law (s. 244).

10. Unlawfully taking from a mint any coining instrument or tool (s. 245).

11. Fraudulently or dishonestly diminishing the weight or altering the composition of any coin or King's coin (ss. 246,247).

12. Altering appearance of any coin or King's coin with intent that it shall pass as a coin of different description (ss. 248,249).

13. Delivery to another of a coin or King's coin possessed with the knowledge that it is altered (ss. 250,251). There must be both possession with knowledge and fraudulent delivery.

14. Possession of an altered coin or King's coin by a person who knew it to be altered when he became possessed thereof (ss. 252,253).

15. Delivery to another of a coin as genuine, which, when first possessed, the deliverer did not know to be altered (s. 254).

Following offences relate to Government stamps.—

1. Counterfeiting or performing any part of the process of counterfeiting a Government stamp (s. 255).

2. Possession of an instrument or a material for the purpose of counterfeiting a Government stamp (s. 256).

3. Making, buying, or selling any instrument for the purpose of counterfeiting a Government stamp (s. 257).

4. Sale of a counterfeit Government stamp (s. 258).

5. Possession of a counterfeit Government stamp (s. 259).

6. Using as genuine a Government stamp known to be counterfeit (s. 260).

7. Fraudulently effacing any writing from a substance bearing a Government stamp or removing from a document the stamp used for it, with intent to cause loss to the Government (s. 261).

8. Using a Government stamp known to have been before used (s. 262).

9. Fraudulently erasing from a Government stamp any mark denoting that the same has been used, or selling or disposing of a stamp from which such a mark has been erased (s. 263).

10. Possession of a fictitious stamp or of any die, plate or instrument for making any fictitious stamp (s. 263-A).

Weights and measures. Ch. XIII.

The following offences relate to weights and measures :—

1. Fraudulent use of false instruments for weighing (s. 264).

2. Fraudulent use of false weight or measure or using any weight or measure of length or capacity, as a different weight or measure from what it is (s. 265).

3. Possession of any instrument for weighing, or of any weight or measure of length or capacity, knowing it to be false, intending that the same may be fraudulently used (s. 266).

4. Making, selling, or disposing of any false instrument for weighing or any false weight or measure of any length or capacity in order that the same may be used or likely to be used as true (s. 267).

Nuisance. Ch. XIV.

A person is guilty of public nuisance who does

(1) any act, or is guilty of an illegal omission,

(2) which causes any common injury, danger, or annoyance (a) to the public, or (b) to the people in general who dwell or occupy property in the vicinity, or

(3) which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right (s. 268).

Nuisance is either (1) public, or (2) private. The former is an offence against the public as it affects the public at large, or some considerable portion of them. It depends in a great measure upon the number of houses and the concourse of people in the vicinity; and the annoyance or neglect must be of a real and substantial nature. Public nuisance cannot be excused on the ground that the act complained of is convenient to a large number of the public Acts which seriously interfere with the health, safety, comfort, or convenience of the public generally, or which tend to degrade public morals, have always been considered public nuisance. A brew-house, glass-house or swine-yard may be a public nuisance if it is shown that the trade is such as to render enjoyment of life and property uncomfortable. Public nuisance can only be the subject of one indictment, otherwise a party might be ruined by a million suits. No prescriptive right can be acquired to maintain a public nuisance.

Private nuisance is anything done to the hurt or annoyance of the lands, tenements or hereditaments of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. It is in the quantum of annoyance that public nuisance differs from private. Private nuisance is not a subject of indictment but a ground of an action for damages, or injunction, or both.

The following offences affect the public health :—

1. Negligent or malignant act likely to spread infection of any disease dangerous to life (ss. 269,270)

2. Wilful disobedience to a quarantine rule (s. 271).

3. Adulteration of food or drink intended for sale so as to make it noxious (s. 272).

4. Selling, offering, or exposing for sale, as food or drink, any article which has been rendered or has become noxious or unfit for food or drink (s. 273).

5. Adulteration of drugs so as to lessen its efficacy, change its operation, or render it noxious (s. 274).

6. Knowingly selling or causing to be used for medicinal purposes any adulterated drug (s. 275).

7. Selling or offering, or exposing for sale, or issuing from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation (s. 276).

8. Voluntarily corrupting or fouling the water of a public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used (s. 277).

9. Voluntarily vitiating the atmosphere so as to make it noxious to the public health (s. 278).

The following offences relate to public safety—

1. Rash or negligent driving or riding on a public way so as to endanger human life, or to cause hurt or injury to any other person (s. 279).

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.

In the case of rash and negligent driving it is not necessary that the act should result in injury to life or property. Even the presence of a person on the road is notessential. The probability of persons using the road being placed in danger is alone taken into consideration.

2. Rash or negligent navigation of a vessel (s. 280).

3. Exhibiting any false light, mark, or buoy, intending or knowing it to be likely to mislead any navigator (s. 281).

4. Conveying a person by water for hire in a vessel overloaded or unsafe (s. 282).

5. Causing danger, obstruction, or injury to any person in a public way or public line of navigation (s. 283).

6. Rash or negligent conduct with respect to any poisonous substance so as to endanger human life, or to be likely to cause hurt or injury to any person (s. 284).

7. Rash or negligent conduct with respect to any fire or cumbustible matter (s. 285).

8. Rash or negligent conduct with respect to any explosive substance (s. 286).

9. Rash or negligent conduct with respect to any machinery in the possession or under the charge of the offender (s. 287).

10. Negligence with respect to pulling down or repairing buildings (s. 288).

11. Negligence with respect to any animal (s. 289).

Acts of public nuisance other than those mentioned above are punishable under the general section (s. 290). A person cannot continue a public nuisance after injunction to discontinue (s. 291).

Offences against public morals and decency are :—

1. Selling, distributing, importing, or printing for sale, or hire, or publicly exhibiting any obscene book, pamphlet, paper, drawing, painting, representation, or figure (s. 292).

2. Having in possession any obscene book for sale or exhibition (s. 293).

3. Causing annoyance to others by—

(*a*) doing any obscene act in any public place ; or

(*b*) singing, reciting, or uttering any obscene song, ballad or words, in or near any public place (s. 294).

4. Keeping any office, or place for the purpose of drawing any lottery not authorized by Government (s. 294 A).

Whoever publishes any proposal to pay any sum, or to deliver any goods, or drawing of any ticket, lot or number in a lottery is also punished (*ibid*). (Fine up to Rs. 100).

An agreement for contributions to be paid by lot, or a transaction requiring skill for winning prizes is not a lottery. Transactions in which prizes are decided by chance amount to lottery.

Offences relating to religion. Ch. XV.

Chapter XV treats of offences relating to religion. They are as follows :—

1. Injuring or defiling a place of worship, or any object held sacred by any class of persons, with intent to insult the religion of any class of persons (s. 295).

2. Voluntarily disturbing a religious assembly lawfully engaged in the performance of religious worship or religious ceremonies (s. 296).

3. Trespassing in a place of worship or burial place, offering any indignity to a corpse, or disturbing persons performing funeral ceremonies, with intent to wound the feelings, or insult the religion of any person or with the knowledge that the feelings of any person are likely to be wounded (s. 297).

4. Uttering any word or making any sound in the hearing of that person, or making any gesture in the sight of that person, or placing any object in the sight of that person (s. 298).

Offences against the person are—

Offences affecting human body. Ch. XVI.

(1) Unlawful homicide
- (a) culpable homicide
- (b) murder
- (c) homicide by rash or negligent act
- (d) suicide

(2) Causing miscarriage.
(3) Hurt.
(4) Wrongful restraint.
(5) Wrongful confinement.
(6) Criminal force.
(7) Assault.
(8) Kidnapping.
(9) Abduction.
(10) Slavery.
(11) Forced labour.
(12) Rape.
(13) Unnatural offence.

Culpable homicide, the genus, and murder, the species, are defined in very closely resembling terms.

Culpable homicide.	Murder.
A person commits culpable homicide (s. 299) if he causes death by doing an act—	A person commits murder (s. 300) if he causes death by doing an act—
(1) with the intention of causing death; or	(1) with the intention of causing death; or
(2) with the intention of causing such bodily injury as is *likely* to cause death; or	(2) with the intention of causing such bodily injury as the offender *knows to be likely* to cause death of the person to whom the harm is caused; or (3) with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is *sufficient in the ordinary course of nature to* cause death; or

(3) with the knowledge that he is *likely* by such act to cause death.

[Transportation for life; or 10 years and fine, if the offence comes under cl. 2. If it comes under cl. 3, then 10 years, or fine, or both—(s. **304**).]

(4) with knowledge that it is so *imminently dangerous* that it must in *all probability* cause death, or such bodily injury as is likely to cause death.

(Capital punishment, or transportation for life, and fine—(s. **302**). Murder by a life convict is punishable with capital punishment—(s. **303**).

An offence cannot amount to murder unless it falls within the definition of culpable homicide; but it may amount to culpable homicide without amounting to murder. All acts of killing done with the intention to kill, or to inflict bodily injury likely to cause death, or with the knowledge that death must be the most probable result are *prima facie* murder; while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. Where the act was not done "with the intention of causing death" (cl. 4, s. 300) the difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. It is culpable homicide where death must have been known to be *a probable* result. It is murder where it must have been known to be *the most probable* result.

Leading cases:—**R. v. Govinda.**
R. v. Gora Chand Gopee.
R. v. Idu Beg.

Death caused by the effect of words on the imagination or the passions of a person amounts to culpable homicide. If a person engaged in the commission of an offence causes death by pure accident he shall suffer only the punishment provided for the offence, without any addition on account of the accidental death. Culpable homicide presupposes an intention, or knowledge of likelihood, of causing death. In the absence of these elements, even if death be caused, the offence will be that of hurt or grievous hurt, *e. g.*, death caused by kicking a person suffering from a diseased spleen.

A person who causes bodily injury to another who is labouring under a disease or bodily infirmity, and thereby accelerates the death of that other will be guilty of homicide (**expln. 1**). Similarly, where death is caused by bodily injury, the person who causes such injury shall be guilty of this offence, although by resorting to proper remedies and skilful

treatment death might have been prevented (expln. 2). The causing of the death of a child in the mother's womb is not homicide. But it will be homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born (expln. 3).

If death is caused by the voluntary act of the deceased resulting from fear of violence on the part of the offender, this offence will be committed. For instance, if four or five persons were to stand round a man, and so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, the person threatening him will be guilty of murder.

There will be no difference in the liability of the offender if the injury intended for one falls on another by accident (s. 301).

Exceptions.

Culpable homicide is not murder in the following cases:—

Provocation.

1. Grave and sudden provocation depriving the offender of the power of self-control, provided that the provocation—

(*a*) is not sought or voluntarily provoked by the offender as an excuse;

(*b*) is not given by anything done in obedience to the law or by a public servant in the lawful exercise of his powers;

(*c*) is not given by anything done in the lawful exercise of the right of private defence.

Provocation resulting from abusive language has been considered to be grave enough. Female infidelity is a common cause of provocation.

Private defence.

2. If the offender, in the exercise in good faith of the right of private defence of person or property, exceeds it, and causes death without premeditation and without intending more harm than is necessary.

Public servant.

3. If the offender being a public servant or aiding a public servant exceeds his legal powers and causes death by an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty, and without ill-will towards the deceased.

4. If it is committed, without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender having taken undue advantage, or acted in a cruel or unusual manner.

Sudden fight.

The fight should not have been pre-arranged. Duelling is not protected at all.

5. When the deceased, being above the age of eighteen years, suffers death or takes the risk of harm with his own consent.

Consent.

Causing the death of any person by doing any rash or negligent act not amounting to culpable homicide is punishable (s. 304-A). [2 years and fine.]

If death results from injury *intentionally* inflicted this section does not apply. Death should have been the direct result of the rash and negligent act and that act must be the proximate and efficient cause without the intervention of another's negligence, It must be the *causa causans;* it is not enough if it is *causa sine qua non.*

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, or knowledge that injury will probably be caused.

Criminal negligence is acting without the consciousness that the illegal and mischievous effect will follow but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness.

Leading cases:—**R. v. Nidamarti.**
R. v. Ketabdi Mundul.

There are two provisions regarding abetment of suicide—

(1) Abetment of suicide of a child or an insane or an idiot or a delirious or an intoxicated person (s. 305).

(2) Abetment of suicide by any person (s. 306).

Attempts.

Attempts to destroy life are of three kinds.—

1. Attempt to murder—i. e., doing an act with such intention or knowledge, and under such circumstances that if the doer by that act caused death he would be guilty of murder (s. 307). [10 years and fine. If hurt is caused, then transportation for life or ten years. If the offender is under sentence of transportation, then death.]

The Bombay High Court has held that there may be an attempt under s. 511 which does not come under this section.

It is not intended to exhaust all attempts to commit murder which should be punished under the Code (*R.* v. *Cassidy*). But the Allahabad High Court has laid down that s. 511 does not apply to attempts to commit murder which are fully and exclusively provided for by this section (*R.* v. *Niddha*).

2. Attempt to commit culpable homicide, i. e., doing an act with such intention or knowledge, and under such circumstances, that, if the doer by that act caused death, he would be guilty of culpable homicide not amounting to murder (s. 308). [If hurt is caused, then 7 years, or fine, or both; in other cases 3 years, or fine, or both.]

3. Attempt to commit suicide.—An act towards the commission of this offence should have been done (s. 309). [1 year or fine, or both.] The act must have been done in the course of the attempt, otherwise no offence is committed.

Thug.

A 'thug' is a person who shall have been

(1) habitually associated with any other or others—

(2) for the purpose of committing—

(*a*) robbery, or

(*b*) child stealing

(3) by means of, or accompanied with, murder (s. 310). [Transportation for life and fine (s. 311).]

Miscarriage, Exposure of children, &c.

The following offences relate to birth and exposure of children:—

1. Voluntarily causing a woman with child or quick with child to miscarry, otherwise than in good faith for the purpose of saving the life of the woman (s. 312), and without her consent (s. 313).

2. Causing the death of a woman by an act done with intent to cause miscarriage (s. 314).

3. Doing an act without good faith with intent to prevent a child being born or to cause it to die after birth (s. 315).

4. Causing the death of a quick unborn child by an act amounting to culpable homicide (s. 316).

5. Exposure and abandonment of a child under 12 years by parent or persons having care of it (s. 317).

6. Concealment of birth by secret disposal of dead body (s. 318).

Hurt.

Whoever causes (1) bodily pain, (2) disease, or (3) infirmity, to any person, is said to cause hurt (s. 319). A person voluntarily causes hurt, if he does any act (*a*) with the intention of thereby causing hurt to any person, or (*b*) with knowledge that he is likely thereby to cause hurt (s. 321). [One year, or fine up to Rs. 1,000, or both—s. 323.]

Acts which will amount to hurt may amount to assault. But hurt may be caused by many acts which are not assaults, for instance, a person who mixes poison and places it on the table of another, or conceals a scythe in the grass on which another is in the habit of walking, or digs a pit in a road intending that another may fall into it, will be guilty of hurt and not of assault.

Grievous hurt.

The following kinds of hurts only are designated as 'grievous':—

1. Emasculation.
2. Permanent privation of the sight of either eye.
3. Permanent privation of the hearing of either ear.
4. Privation of any member or joint.
5. Destruction or permanent impairing of the powers of any member or joint.
6. Permanent disfiguration of the head or face.
7. Fracture or dislocation of a bone or tooth.
8. Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits (s. 320).

Voluntarily causing grievous hurt is voluntarily causing hurt, intending it or knowing it likely to be grievous (s. 322). [Imprisonment for 7 years and fine—(s. 325).

The following are the aggravated forms of the above two offences :—

1. Voluntarily causing hurt (s. 324) or grievous hurt (s. 326) by an instrument used for shooting, stabbing, or cutting or which as a weapon of offence is likely to cause death; or by fire or any heated substance or poison, or any explosive or deleterious substance, or by means of any animal.

2 Voluntarily causing hurt (s. 327), or grievous hurt (s. 329), to extort from the sufferer or any one interested in him, property or valuable security; or to constrain him to do anything illegal: or to facilitate the commission of an offence.

3. Causing hurt by administering poison or any stupefying, intoxicating, or unwholesome drug, with intent to commit or facilitate the commission of an offence (s. 328).

4. Voluntarily causing hurt (s. 330) or grievous hurt (s. 331), to extort from the sufferer or any one interested in him a confession or any information which may lead to the detection of an offence; or to constrain the restoration of property, or the satisfaction of any claim.

5. Voluntarily causing hurt (s 332), or grievous hurt (s. 333), to a public servant in the discharge of his duty, or to prevent or deter him from so discharging it.

Hurt or grievous hurt caused on grave and sudden provocation is not severely punished (ss. 334 and 335). Rash or negligent acts which endanger human life or the personal safety of others are made punishable even though no harm follows (s 336); and if hurt or grievous hurt is caused by such acts the punishment will be more severe (ss. 337 and 338).

Wrongful restraint.

Wrongful restraint is (1) voluntarily obstructing a person (2) so as to prevent him from proceeding in any direction (3) in which he has a right to proceed (s. 339). (1 month, Rs. 500 or both s. 341).

The slightest unlawful obstruction to the liberty of a person to lawfully go when and where he likes to go is punishable.

Wrongful confinement.

Wrongful confinement is (1) wrongfully restraining a person (2) in such a manner as to prevent him from proceeding beyond certain circumscribing limits (s. 340), (1 year, or Rs. 1,000, or both—s. 342).

Wrongful confinement is a form of wrongful restraint. Wrongful restraint keeps a man out of a place where he wishes to be. Wrongful confinement keeps a man within limits out of which he wishes to go, and has a right to go.

In wrongful confinement there must be a total restraint, not a partial one. If a man merely obstructs the passage of another in a particular direction leaving him at liberty to stay where he is or to go in any other direction if he pleases, he cannot be said thereby to wrongfully confine him. Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict,

is sufficient. Malice is not necessary. The period of confinement is immaterial except with reference to punishment.

Leading cases :—**Bird v. Jones.**
Dhania v. Clifford.
Austin v. Dowling.

The following are the aggravated forms of this offence:—

1. Wrongful confinement for three or more days (s. 343).

2. Wrongful confinement for ten or more days (s. 344).

3. Wrongful confinement of a person knowing that a writ for his liberation has been issued (s. 345).

4. Wrongful confinement in secret so as to indicate an intention that the confinement of such person may not be known to any person interested in that person or to any public servant (s. 346).

5. Wrongful confinement for the purpose of extorting any property or valuable security, or constraining any person to do anything illegal or to give any information which may facilitate commission of an offence (s 347).

6. Wrongful confinement for the purpose of extorting confession or information which may lead to the detection of an offence, or compelling restoration of any property or valuable security or the satisfaction of any claim or demand (s. 348).

Force.

A person is said to use force to another,

(1) if he causes motion, change of motion, or cessation of motion to that other, or

(2) if he causes to any substance such motion, or change of motion or cessation of motion as brings that substance into contact (*a*) with any part of that other's body or (*b*) with anything which that other is wearing or carrying, or (*c*) with anything so situated that such contact affects that other's sense of feeling; provided that he does so in any of the three following ways :—

1. By his own bodily power.

2. By disposing any substance in such a manner that the motion or change, or cessation of motion, takes place without any further act on his part, or on the part of any other person.

3. By inducing any animal to move, to change its motion, or to cease to move (s. 349).

A person uses 'criminal force' to another if

Criminal force. (1) he intentionally uses force to any person,

(2) without that person's consent,

(3) in order to the committing of any offence, or

(4) intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used (**s. 350**) (3 months, or Rs. 500, or both).

Assault. A person commits an 'assault,' if he

(1) makes any gesture, or any preparation,

(2) intending or knowing it to be likely,

(3) that such gesture or preparation will cause any person present to apprehend

(4) that he is about to use criminal force to that person, (**s. 351**). (3 months, Rs. 500, or both—**s. 352**).

An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. An assault is included in every use of criminal force. Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault (**expln.**).

Assault or criminal force on grave provocation is not severely punishable (1 month, or Rs. 200 fine or both—(**s. 358**). The provocation should not be voluntarily sought, or it should not have been given by anything done in obedience to the law or done by a public servant in the lawful exercise of his powers, or done in the lawful exercise of the right of private defence.

Leading cases :—**Cama v. Morgan.**
Stephen v. Myers.

An assault differs from an 'affray'—

(1) An 'assault' may take place anywhere, whereas an 'affray' must be committed in a public place.

(2) An 'assault is regarded as an offence against the person of an individual, whereas an 'affray' is regarded as an offence against the public peace.

The following are the aggravated forms of the offence of 'assault' and 'use of criminal force' :—

1. Assaulting or using criminal force to deter a public servant from the discharge of his duty (**s. 353**).

2. Assaulting or using criminal force to a woman with intent to outrage her modesty (**s. 354**).

3. Assaulting or using criminal force with intent to dishonour a person, otherwise than on grave provocation (s. 355).

4. Assaulting or using criminal force in attempting to commit theft of property carried by a person (s. 356).

5. Assaulting or using criminal force to any person, in attempting wrongfully to confine that person (s. 357).

Kidnapping. Kidnapping is of two kinds:

(I) Kidnapping from British India and

(II) Kidnapping from lawful guardianship (s. 359). (7 years and fine).

I. Whoever

(1) conveys any person beyond the limits of British India

(2) without the consent (*a*) of that person, or (*b*) of some person legally authorized to consent on behalf of that person,

is said to kidnap that person from British India (s. 360).

II. Whoever (*a*) takes or (*b*) entices

(1) any minor (*a*) under fourteen years of age, if a male, or (*b*) under sixteen years of age if a female, or

(2) any person of unsound mind,

(3) out of the keeping of the lawful guardianship of such minor or person of unsound mind,

(4) without the consent of such guardian,

is said to kidnap such minor or person from lawful guardianship (s. 361).

These sections protect children of tender age from being kidnapped or seduced for immoral purposes, as well as protect the rights of parents and guardians having the custody of minors or insane persons.

The person kidnapped must be *taken* out of the possession of the parent by any means forcible or otherwise; and the consent of the person kidnapped does not lessen the offence. There is a difference of opinion as to when the 'taking' is complete.

Calcutta and Allahabad High Courts.—The offence is complete when the minor is actually taken from lawful guardianship (*R.* v. *Nemai Chatto Raj*, F. B.; *R.* v. *Ram Dei*). Kidnapping from guardianship is not a continuing offence.

Madras High Court.—So long as the process of taking the minor out of the keeping of his lawful guardian continues, the offence may be abetted (*R.* v. *Samia Kaundan*).

It is no defence that the accused did not know that the person kidnapped was under sixteen or believed that she had no guardian. Any one dealing with such person does so at his peril. The period of detention is immaterial.

Abducting. **A person is said to 'abduct' another if he**

(1) by force compels, or

(2) by any deceitful means induces,

(3) any person to go from any place (s. 362).

'Abduction', differs from 'kidnapping'—

(1) In 'abduction' the removal of the person need not be from the protection of lawful guardianship.

(2) The element of force or fraud existing in 'abduction' is absent in 'kidnapping.'

(3) In 'abduction' the age of the person abducted is immaterial, in 'kidnapping,' the person must be under fourteen, if a male, and under sixteen, if a female.

(4) Abduction is a continuing offence. The Calcutta and Allahabad High Courts have held that kidnapping is not a continuing offence. (*R.* v. *Nemai the Chattoraj*, F. B.; *R.* v. *Ram Dei*).

The following are the aggravated forms of the offence of 'kidnapping' or 'abducting':—

1. Kidnapping or abducting in order to murder (s. 364).

2. Kidnapping or abducting with intent secretly and wrongfully to confine a person (s. 365).

3. Kidnapping or abducting a woman to compel her to marry any person against her will, or to force or seduce her to illicit intercourse (s. 366).

4. Kidnapping in order to subject a person to grievous hurt, slavery, or unnatural lust (s. 367).

5. Wrongfully concealing or confining a kidnapped or abducted person (s. 368).

6. Kidnapping or abducting a child under ten years with intent to steal moveable property from the person of such child (s. 369).

Slavery. Two provisions deal with slavery.—

1. (*a*) Importing, exporting, removing, buying, selling, or disposing of any person as a slave, or

(*b*) accepting, receiving, or detaining against his will any person as a slave (s 370)

There must be a selling or disposal of a person 'as a slave,' that is, a selling or disposal whereby one who claims to have a property in the person as a slave, transfers that

property to another. Lawful contracts for the transfer of, a child by its parents do not amount to this offence, e. g., giving a child in adoption, buying girls for marriage, etc.

2. Habitually importing, exporting, removing, buying selling, trafficking or dealing in slaves (s. 371).

Sale of minors for immoral purpose.

Two provisions relate to selling or buying minors for immoral purposes :—

1. Selling, letting to hire, or otherwise disposing of a minor under sixteen for the purpose of prostitution, or other wrongful and immoral purpose (s. 372).

2. Buying, hiring, or otherwise obtaining possession of such a minor for a like purpose (s. 373).

Rape.

A man is said to commit 'rape' who has sexual intercourse with a woman

1. against her will; or
2. without her consent; or
3. with her consent, when her consent has been obtained by putting her in fear of death or of hurt; or
4. with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man, to whom she is or believes herself to be lawfully married; or
5. with or without her consent when she is under twelve years of age (s. 375). (Transportation for life or ten years' imprisonment and fine—s. 376).

Sexual intercourse by a man with his own wife, the wife not being under *twelve* years, is not rape (excep.)

Indecent assault upon a woman does not amount to an attempt to commit rape unless the Court is satisfied that the accused was determined to gratify his passions at all events, and in spite of all resistance.

Unnatural offence.

Unnatural offence is having (1) carnal intercourse (2) against the order of nature, (3) with any man, woman or animal (s. 377).

Offences against property. Ch. XVII.

The following are the offences against property dealt with in Chapter XVII.

1. Theft.
2. Extortion.
3. Robbery.
4. Dacoity.
5. Receiving stolen property.
6. Cheating.
7. Fraudulent deeds and disposition of property.
8. Mischief.
9. Criminal trespass.
   (*a*) House-trespass.
   (*b*) Lurking house-trespass.
   (*c*) House-breaking.
   (*d*) Lurking house-breaking.

The above offences may be grouped in three classes:—

(1) Offences dealing with deprivation of property (ss. 378-424).

(2) Offences dealing with injury to property (ss. 425-440).

(3) Offences dealing with violation of rights of property in order to the commission of some other offence (ss. 441-462).

Theft.

A person is said to commit theft who
(1) intending to take dishonestly
(2) any moveable property
(3) out of the possession of any person
(4) without that person's consent,
(5) moves that property, in order to such taking (s. 378). (3 years, or fine, or both, s. 329).

A thing attached to the earth can be the subject of theft when separated from the earth. A person moving an obstacle which prevented a thing from moving is said to cause it to move. A person causing an animal to move is said to move whatever is thereby moved by the animal. The owner's consent may be express or implied (explns.).

The intention to take dishonestly must exist at the time of the moving of the property. If the act is not done *animo furandi*, it will not amount to theft. The test is: is the taking warranted by law? It is not necessary that the taking should be of a permanent character, or that the accused should have derived any profit. Property removed in the assertion of a contested claim does not constitute theft. A *bona fide* claim of right rebuts the presumption of dishonesty. But a creditor removing a debtor's property to enforce payment will be liable. A person taking dishonestly his own property out of the possession of another will be guilty of this offence. Thus the person from whose possession the property is taken may not be the owner. If one of the joint owners take exclusive possession of joint property dishonestly he would be guilty of theft. The least removal of the thing from its place is sufficient for the offence. It does not matter whether the property remains within its owner's reach or not.

Leading cases:—**R. v. Nagappa.**
R. v. Shri Churn Chungo.

The following are the aggravated froms of the offence.—

1. Theft in any building, tent or vessel used as a human dwelling or for the custody of property (s. 380).

2. Theft by a clerk or a servant, of property in possession of his master (s. 381).

3. Theft after preparation made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint to any person, in order to the committing of such theft or the effecting of such escape afterwards, or the retaining of property taken by such theft (s. 382).

A person commits 'extortion' if he

Extortion.

(1) intentionally puts any person in fear of any injury

(a) to that person, or

(b) to any other, and thereby

(2) dishonestly induces the person so put in fear,

(3) to deliver to any person any

(a) property or

(b) valuable security, or

(c) any thing signed or sealed, which may be converted into a valuable security (s. 383), 3 years, or fine, or both—(s. 384).

The inducement to part with the property should be dishonest, *i. e.*, with intent to cause wrongful gain or loss.

The 'fear' in extortion must be such as to unsettle the mind of the person on whom it operates, and to take away from his acts that element of free voluntary action which alone constitutes consent. The terror of a criminal charge or of a loss of an appointment amounts to a fear of injury. 'Fear' must precede the delivery of property. Thus wrongful retention of property obtained without threat will not amount to extortion, even though subsequent threats are used to retain it.

'Theft' thus differs from 'extortion':—

(1) In 'theft' the property is taken without the owner's consent; in 'extortion' the consent is obtained by putting a person in fear of any injury to him or any other.

(2) 'Theft' can only be committed of moveable property; 'extortion' may be committed of immoveable property as well.

The following are the aggravated forms of extortion—

1. Putting or attempting to put any person in fear of injury in order to commit extortion (s. 385).

2. Extortion by putting a person in fear of death, or grievous hurt to that person or to any other (s. 386).

3. Putting or attempting to put any person in fear of death, or of grievous hurt to himself or any other in order to commit extortion (s. 387).

4. Extortion by threat of accusation of an offence, punishable with death or transportation for life, or ten years' imprisonment or of having attempted to induce any other person to commit such offence (s. 388).

5. Putting or attempting to put any person in fear of such accusation as is mentioned above in order to commit extortion (s. 389).

Robbery.

'Robbery' is an aggravated form of either theft or extortion. In all 'robbery' there is either theft or extortion.

Theft is 'robbery' if

(1) in order to the committing of the theft, or in committing the theft, or

(2) in carrying away, or attempting to carry away, property obtained by the theft,

(3) the offender, for that end, voluntarily causes, or attempts to cause to any person

(a) death, or hurt, or wrongful restraint, or

(b) fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is 'robbery' if the offender, at the time of committing the extortion, is

(1) in the presence of the person put in fear, and

(2) commits the extortion by putting that person in fear of instant death, or of instant hurt, or of instant wrongful restraint to that person, or to some other person, and

(3) by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted (s. 390). (10 years and fine. If the robbery is committed on the high-way between sunset and sunrise, then 14 years—s. 392. Attempt, 7 years and fine—s. 393. If hurt is caused, transportation for life, or 10 years and fine—s. 394). The offender is said to be *present* if he is near enough to put the other in fear.

An accidental injury by a thief will not convert his offence into robbery. Similarly if hurt is caused to avoid capture the offence will not amount to robbery, *e. g.*, throwing stones to avoid pursuit.

Belonging to a wandering gang of persons associated for the purpose of habitually committing theft or robbery is made punishable (s. 401).

Dacoity. When (1) five or more persons conjointly commit, or attempt to commit, a robbery, or

(2) where the whole number of persons conjointly committing, or attempting to commit, a robbery, *and* persons present and aiding such commission or attempt amount to five or more

everyperson so committing, attempting, or aiding, is said to commit 'dacoity' (s. 391). (Transportation for life or ten years—s. 395).

If any one of the dacoits commit murder in committing dacoity, every one of them shall be punished with death, or transportation for life, or rigorous imprisonment extending to ten years and fine (s. 396). It does not matter whether a particular dacoit was inside the house where the dacoity was committed, or outside the house, so long as the murder is committed in the commission of the dacoity. It is not necessary that the murder should be committed in the presence of all.

Preparation to commit dacoity is punishable (s. 399). and so is either belonging to a gang of dacoits (s. 400) or assembling for the purpose of committing dacoity (s. 402).

Aggravated forms of robbery and dacoity are—

(1) Offender using any deadly weapon at the time of committing robbery or dacoity, or causing or attempting to cause death or grievous hurt to any person (s. 397).

This section only applies to the offender who actually uses a deadly weapon, or causes grievous hurt.

(2) Attempt to commit robbery or dacoity when armed with a deadly weapon (s. 398).

A person commits 'criminal misappropriation,' if he

Criminal misappropriation. (1) dishonestly misappropriates or converts to his own use

(2) any moveable property (s. 403). (2 years, or fine, or both).

The offence is committed though the misappropriation be only temporary. The finder of property is not guilty if he takes it to protect it or to find the owner; but he is guilty, if he appropriates it knowing the owner, or having the means of discovering him, or before using reasonable means to discover him, or not, believing it to be his own property, or not believing in good faith that the owner cannot be found (expls. 1 and 2).

This offence takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. Thus retention of money by a servant authorised to collect it from a person may be criminal misappropriation even though he retains it on account of wages due to him.

A person retaining money paid by mistake will be guilty of criminal misappropriation. But there can be no criminal misappropriation of things which have actually been abandoned.

Leading cases:—**Bhagiram v. Abar Dome.**
R. v. Sita.
Romesh Chunder v. Hiru Mondal.

'Theft' is distinguished from 'criminal misappropriation'—

(1) In 'theft' the property is taken out of the possession of another person and the offence is complete as soon as the offender moves the property. In 'criminal misappropriation' there is no invasion of another's possession. The property is often innocently got into possession.

(2) In 'theft' the dishonest intention must precede the act of taking; in 'criminal misappropriation' it is the subsequent intention to 'convert or misappropriate' the property that constitutes the offence.

There is a difference between 'criminal misappropriation' and 'cheating.' In 'criminal misappropriation' as in 'criminal breach of trust,' the original reception of property is legal, the dishonest conversion takes place subsequently. In 'cheating' deception is practised to get possession of the thing.

The aggravated form of criminal misappropriation is dishonest misappropriation of property possessed by a deceased person at the time of his death (s. 404).

Criminal breach of trust.

A person commits 'criminal breach of trust', if he

(1) being in any manner entrusted (*a*) with property or (*b*) with any dominion over property

(2) dishonestly (*a*) misappropriates, or (*b*) converts to his own use, that property, or

(3) dishonestly (*a*) uses, or (*b*) disposes of, that property,

(4) in violation (*a*) of any direction of law prescribing the mode in which such trust is to be discharged, or (*b*) of

any legal contract, express or implied, which he has made touching the discharge of such trust, or

(5) wilfully suffers any other person so to do (s. 405). (3 years, or fine, or both—s. 406).

'Criminal misappropriation' differs from 'criminal breach of trust'—

(1) In the former the property comes into the possession of the offender by some casualty, and he afterwards misappropriates it; in the latter the offender is lawfully entrusted with property and he dishonestly misappropriates it or wilfully suffers any other person to do so.

(2) 'Criminal breach of trust' only applies to conversion of property held by a person in a fiduciary capacity; 'criminal misappropriation', to property coming into possession of the offender anyhow.

The following are the aggravated forms of criminal breach of trust:—

1. Criminal breach of trust by a carrier, wharfinger, or warehouse-keeper (s. 407).

2. Criminal breach of trust by a clerk or servant (s. 408).

3. Criminal breach of trust by a public servant, banker, merchant, factor, broker, attorney or agent (s. 409).

Stolen property. 'Stolen property' is—

(1) Property the possession whereof has been transferred by (*a*) theft, (*b*) extortion, or (*c*) robbery.

(2) Property criminally misappropriated.

(3) Property in respect of which criminal breach of trust has been committed.

It is immaterial whether the transfer has been made, or the misappropriation or breach of trust has been committed within or without British India. But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it ceases to be stolen property (s. 410). (Receiving or obtaining stolen property knowing it to be such is punishable with 3 years, or fine, or both—s. 411). This section does not apply to the actual thief.

If stolen goods are restored to the possession of the owner and he returns them to the thief for the purpose of enabling him to sell them to a third person, they are no longer stolen goods; and the third person cannot be convicted of receiving them although he received them knowing them to be stolen.

'Dishonest retention' of property is distinguished from 'dishonest reception' of it. In the former offence the dishonesty supervenes after the act of acquisition of possession, while in the latter dishonesty is contemporaneous with such act. Thus a person cannot be convicted of 'receiving' if he has no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was stolen. Neither the thief, nor the receiver of stolen property, commits the offence of retaining such property dishonestly merely by continuing to keep possession of it.

Property into or for which the stolen property has been converted or exchanged is not stolen property, *e. g.*, proceeds of a stolen cheque, or the change given for a stolen currency note.

Res nullius cannot be the subject of receiving, *e. g.*, a bull let loose as a part of religious ceremony and belonging to no one is not the subject of theft.

If articles belonging to different persons are received at one time, the conviction will be only for one act of receiving, and not separate convictions.

The following are the aggravated forms of this offence:—

1. Dishonestly receiving property stolen in the commission of a dacoity (s. 412).

2. Habitually dealing in stolen property (s. 413).

3. Voluntarily assisting in concealing or disposing of, or making away, with stolen property (s. 414).

Cheating. A person is said to 'cheat' if he

(1) by deceiving any person,

(2) fraudulently or dishonestly induces the person so deceived

(3) to deliver any property to any person, or

(4) to consent that any person shall retain any property, or

(5) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which

(6) act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property (s. 415).

Dishonest concealment of facts is a deception (expln.)

(1 year, or fine, or both (s. 417).

Like 'extortion,' 'cheating' is committed by wrongful obtaining of a consent. The difference is that in the for-

mer the consent is obtained by intimidation, in the latter, by deception.

'Cheating' also differs from 'theft'—

(1) In the former the property obtained by deception may be moveable or immoveable, in the latter it must be moveable.

(2) In 'theft' the property is taken without the consent of the owner, in 'cheating' the owner's consent is obtained by deception.

It is not necessary that cheating should be committed in express words if it can be inferred from all the circumstances attending the obtaining of property. But it is necessary that a person should be deceived. If a person knows what the deception is and acts on it, the person practising deception will be guilty of attempt to cheat but not of cheating. The offence will be committed even if the person deceived is other than the one on whom the deception is practised. Similarly it is not necessary that there should be an intent to deceive any particular individual. If a false prospectus or balance sheet is issued to the public, or to a section of the public, the persons issuing it will be guilty of cheating although there was no intent to deceive any one in particular (*R.* v. *Ross*).

The person to whom the property is delivered may not be *particeps criminis*.

Mere puffing will not amount to this offence (*R.* v. *Bryan*), the case of Elkington's spoons).

Leading cases :—**R. v. Abbas Ali.**
R. v. Appasami.
R. v. Soshi Bhushan.

If the deception is in regard to a future event, then there must be evidence of an intention to cheat when the deception was made. Mere failure to carry out a promise is not enough. A man may intend to fulfil his promise, but subsequently he may change his mind.

The following are the aggravated forms of cheating:—

1. Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect (s. **418**).

2. Cheating by personation (ss. **416, 419**).

3. Cheating and thereby dishonestly inducing the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or any thing which is signed or sealed, and which

is capable of being converted into a valuable security (s. 420).

A person is said to 'cheat by personation' if he cheats

Cheating by personation.

(1) by pretending to be some other person, or

(2) by knowingly substituting one person for another, or

(3) representing that he or any other person is a person other than he or such other person really is (s. 416).

It is immaterial whether the individual personated is a real or imaginary person (expln.). [3 years, or fine, or both—s. 417].

As soon as a man by word, act, or sign, holds himself out as a particular person with the object of passing himself off as that person, and exercising the right which that person has, he has personated him. For instance, if A represents himself to be B at an examination, or represents himself to be of a particular caste when he is not, or gives a false description of his position in life, he commits this offence.

Fraudulent deeds and dispositions.

The following provisions relate to fraudulent deeds and dispositions of property.—

1. Dishonest or fraudulent removal or concealment or transfer of property to prevent distribution among creditors (s. 421).

2. Dishonestly or fraudulently preventing from being made available for creditors a debt or demand due to the offender or to any other person (s. 422).

3. Dishonestly or fraudulently signing, executing or becoming a party to any instrument which purports to transfer or change any property and which contains any false statement as to the consideration for such transfer or charge or as to the person or persons for whose benefit it is intended to operate (s. 423).

4. Dishonestly or fraudulently concealing or removing any property of the offender or of any other person, or assisting in the concealment, or removal thereof, or dishonestly releasing any demand or claim to which the offender is entitled (s. 424).

A person commits 'mischief' if he

Mischief.

(1) with intent to cause or knowing that he is likely to cause wrongful loss or damage (*a*) to the public or (*b*) to any person,

(2) causes (*a*) the destruction of any property, or (*b*) any such change in any property, or in the situation thereof as

(3) destroys or diminishes its value or utility, or affects it injuriously (s. 425).

The offender need not intend loss or damage to the owner. The property may belong to the offender, or to him jointly with others (expln). (3 months, or fine, or both—s. 426).

A man may commit mischief on his own property to cause wrongful loss to some person. If a person does any act amounting to mischief in the exercise of a *bona fide* claim of right he cannot be convicted of this offence. An act done through negligence will never amount to mischief. Mischief cannot be committed in respect of a *res nullius*, e. g., killing a bull set free.

The aggravated forms of mischief are as follows.—

1. Committing mischief, and thereby causing damage to the amount of 50 rupees (s. 427).

2. Mischief by killing, poisoning, rendering useless, or maiming any animal of the value of 10 rupees (s. 428).

3. Mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox or any other animal of the value of Rs. 50 or upwards (s. 429).

4. Mischief by injury to works of irrigation or by wrongfully diminishing the supply of water for agricultural purposes or for food, or drink, or cleanliness (s. 430).

5. Mischief by injury to public road, bridge, river or channel, so as to render it impassable or less safe for travelling or conveying property (s. 431).

6. Mischief by causing inundation or obstruction to public drainage attended with damage (s. 432).

7. Mischief by destroying, or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights (s. 433).

8. Mischief by destroying, moving, or rendering less useful any land-mark fixed by authority of a public servant (s. 434).

9. Mischief by fire or explosive substance with intent to cause damage to the amount of Rs. 100 or upwards, or where the property is agricultural produce ten rupees or upwards (s. 435).

10. Mischief by fire or explosive substance with intent to destroy any building used as a place of worship, or human dwelling, or as a place for the custody of property (s. 436).

11. Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden (s. 437).

12. Mischief or attempt to commit mischief as described above with fire or any explosive substance (s. 438).

13. Intentionally running vessels aground or ashore with intent to commit theft or misappropriation of property (s. 439).

14. Mischief committed after preparation made for causing to any person death, hurt, or wrongful restraint, or fear of death, hurt, or wrongful restraint (s. 440).

A person commits 'criminal trespass' if he

Criminal trespass. (1) enters into or upon property in the possession of another

(2) with intent to commit an offence, or

(3) to intimidate, insult, or annoy any person in possession of such property: or

4. having lawfully entered into or upon such property unlawfully remains there,

(a) with intent thereby to intimidate, insult, or annoy any such person, or

(b) with intent to commit an offence (s. 441). (3 months, Rs. 500, or both s. 447).

Trespass can only be committed in respect of immoveable corporeal property. The essence of the offence is the intention with which it is committed. A person entering on the land of another in the exercise of a *bona fide* claim of right will not be guilty though the claim is unfounded. But if the entry is made with *intent to annoy* it does not matter whether it was made under a claim of right. The annoyance must be such as would affect an ordinary man, not what would specially and exclusively annoy a particular individual of a queer temperament.

The property must be in the actual possession of a person other than the trespasser. It is the *de facto* possession and not *de jure* that is necessary. The person in possession may be an individual or a corporate person.

The entry must be to commit an offence as defined in s. 40 and not any unlawful act. Thus entering an exhibition without a ticket will not amount to criminal trespass.

House-trespass. A person commits 'house-trespass' if he
(1) commits criminal trespass
(2) by entering into, or remaining in
(*a*) any building, tent or vessel used as a human dwelling, or
(*b*) any building
(i) used as a place of worship, or
(ii) as a place for the custody of property (s 442).

Introduction of any part of the trespasser's body is sufficient (expln). (1 year, or Rs. 1,000, or both—s. 448).

The following are the aggravated forms of this offence.—

1. House-trespass in order to the commission of an offence punishable with death (s. 449).

2. House-trespass in order to the commission of an offence punishable with transportation for life (s 450).

3. House-trespass in order to the commission of an offence punishable with imprisonment (s 451).

4 House-trespass after preparation made for causing hurt, assault, or wrongful restraint to any person, or for putting any person in fear of hurt, assault, or wrongful restraint (s. 452).

Lurking house-trespass. 'Lurking house-trespass' is house-trespass, after taking precautions to conceal such house-trespass from some person who has a right to exclude, or eject, the trespassor from the building, tent, or vessel which is the subject of the trespass. (s 443). (2 years and fine—s. 453).

Whoever commits lurking house-trepasss after sunset and before sunrise is said to commit 'lurking house-trespass, by night (s. 455). (3 years and fine—s. 456).

House-breaking. A person is said to commit 'house-breaking', if he

(A) commits house-trespass, and effects his *entrance* into the house, or

(B) if being in the house for committing an offence, or after committing an offence, *quits* it in any of the following ways.—

1. Through a passage made by himself, or by any abettor of the house-trespass in order to the committing of the house-trespass.

2 Through any passage not intended by any person other than himself or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

3. Through any passage which he, or any abettor of the house-trespass, has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

4. By opening any lock.

5. By using criminal force, or committing an assault, or by threatening any person with assault.

6. By any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself, or by an abettor of the house-trespass (s. 445). (2 years and fine—s. 453).

House-breaking after sunset and before sunrise is said to be 'house-breaking by night' (s. 446). (3 years and fine—s. 456)

The following are the aggravated forms of the offence of lurking house-trespass and house-breaking :—

1. Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment (s 455).

2. Lurking house-trespass or house-breaking after preparation made for causing hurt to any person (s. 455).

3. Causing grievous hurt or attempting to cause death or grievous hurt to any person whilst committing lurking house-trespass or house-breaking (s. 459).

The following are the aggravated forms of the offence of 'lurking house-trespass by night' and 'house-breaking by night.—

1 Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment (s 457).

2. Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person (s. 458).

All persons jointly concerned in lurking house-trespass or house-breaking by night are punishable where death or grievous hurt is caused by one of them (s. 460).

Dishonestly breaking open a receptacle containing property is punishable (s. 461). The punishment is much more severe when such act is committed by a person who is entrusted with its custody (s. 462).

Chapter XVIII deals with offences relating to documents and to trade and property marks:

A person commits forgery if he

Forgery. Chap. XVIII.

(1) makes any false document, or part of a document:

(2) with intent (*a*) to cause damage, or injury to the public or to any person, or

(*b*) to support any claim or title, or

(*c*) to cause any person to part with property, or

(*d*) to enter into any express or implied contract, or

(*e*) to commit fraud, or that fraud may be committed (**s. 463**). (2 years, or fine, or both—s. 465). Using as genuine a forged document is punishable likewise (**s. 471**).

A person is said to *make* a false document.

1. If he dishonestly or fraudulently (*a*) makes, signs, seals, or executes a document, or part of a document, or makes any mark denoting the execution of a document

(*b*) with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed

(i) by, or by the authority of a person by whom, or by whose authority he knows that it was not made, signed, sealed, or executed, or

(ii) at the time at which he knows that it was not made, signed, sealed, or executed. Or

II. If he dishonestly, or fraudulently without lawful authority, by cancellation or otherwise,

(*a*) alters a document in any material part thereof,

(*b*) after it has been made or executed either by himself, or by any other person,

(*c*) whether such person be living, or dead at the time of such alteration. Or

III. If he dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person,

(*a*) by reason of unsoundness of mind, or intoxication cannot, or

(*b*) that by reason of deception practised upon him, he does not

(*c*) know the contents of the document, or the nature of the alteration (**s. 464**).

A man's signature of his own name may amount to forgery (**expln. 1**). But this must have been done in order that it may be mistaken for the signature of another person of the same name. Making a false document in the name of a fictitious person intending it to be believed that the document was made by a real person, or in the name of a

deceased person, intending it to be believed that the document was made by that person in his life-time may amount to forgery (expln. 2). A false document made wholly or in part by forgery is designated 'a forged document' (s. 470).

It is not an essential quality of the fraud mentioned in the section that it should result in or aim at deprivation of property. The offence is complete as soon as a document is made with intent to commit a fraud. But the false document must appear on its face to be one which, if true, would possess some legal validity or must be legally capable of affecting the fraud intended. A writing, which is not legal evidence of the matter expressed, may yet be a document if the parties framing it believed and intended it to be evidence of such matter. It is not necessary that the document should be made in the name of a really existing person.

Counterfeiting a document to support a legal claim will amount to forgery. Antedating a document or inserting a false date in it constitutes forgery.

A general intention to defraud, without the intention of causing wrongful gain or loss to any particular person, is sufficient. There must, however, be a possibility of some person being defrauded. A man may have an intent to defraud and yet there may not be any person who could be defrauded by his act.

If several persons combine to forge an instrument, and each takes a distinct part in it, they are nevertheless all guilty.

It will amount to forgery even though the fabricated document purports to be a copy of another document.

Personation at an examination will amount to forgery as well as cheating.

Leading cases :—**R. v. Abbas Ali.**
R. v. Lolit Mohan.
R. v. Shoshi Bhushan.
R. v. Kotamaraju.

The Calcutta and the Madras High Courts have held that a document made to conceal a previous fraudulent or dishonest act amounts to forgery.

The Allahabad High Court is of opinion that the falsification of record to conceal previous act of fraud or negligence does not amount to forgery.

The Bombay High Court has laid down that such falsification is not forgery if it is only for the purpose of concealing a previous act of negligence.

The following are the aggravated forms of the offence of forgery :—

1. Forgery of a record of a Court of Justice or of a register of births, baptism, marriage or burial, or a certificate or authority to institute or defend a suit or a power of attorney (s. 466).

2. Forgery of a valuable security or will (s. 467).

3. Forgery for the purpose of cheating (s. 468).

4. Forgery for the purpose of harming the reputation of any person (s 469).

Other offences relating to documents are :—

1. Making or possessing a counterfeit seal, plate, etc., with intent to commit forgery punishable under section 467 (s. 472).

2. Same as above when punishable otherwise (s 473).

3. Possession of a valuable security or will, known to be forged, with intent to use it as genuine (s 474).

4. Counterfeiting a device or mark used for authenticating document described in s. 467, or possessing counterfeit marked material (s 475).

5 Same as above when documents are other than those described in s. 467 (s 476).

6. Fraudulent cancellation, destruction, defacement or secretion etc., of a will or an authority to adopt or a valuable security (s. 477).

7. Falsification of accounts by a clerk or officer of servant with intent to defraud (s. 477-A.)

Trade-mark.

A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a 'trade-mark,' and the Penal Code 'trade-mark' includes

(1) any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs and Trade-Marks Act, 1883, and

(2) any trade-mark which either with or without registration, is protected by law in any British possession or Foreign State to which the provisions of section 103 of the above Act are applicable (s. 478).

A person uses a false trade-mark

(1) if he marks any goods or any case, package, or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon,

(2) in a manner resonably calculated to cause it to be believed that the goods so marked, or any goods contained

in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not (s. 480). (1 year, or fine, or both—s. 482).

Property in a trade-mark is the right to the exclusive use of some mark, name, or symbol, in connection with a particular manufacture. If the same mark is used on a different article it is not an infringement of such right.

Property-mark.

A mark used for denoting that moveable property belongs to a particular person is called a 'property-mark' (s. 479).

A person uses a false property-mark

(1) if he marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods; or

(2) uses any case, package or other receptacle, having any marks thereon;

(3) in a manner reasonably calculated to cause it to be believed that the property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong (s. 481) (1 year, or fine, or both—s 482).

The function of a property-mark to denote certain ownership is not destroyed because any particular property on which it is impressed ceases to be of that ownership.

Trade-mark denotes the manufacture or quality of the goods to which it is attached, and *property-mark*, the ownership of them.

The following offences relate to counterfeiting any trade or property mark used by a person.—

1. Counterfeiting any trade-mark or property-mark used by another (s. 483).

2. Counterfeiting a mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that property is of a particular quality or has passed through a particular office or that it is entitled to any exemption (s. 484).

3. Making or possession of any instrument for counterfeiting a trade-mark or property-mark (s. 485).

4. Selling or exposing or possessing for sale or any purpose of trade or manufacture any goods or things with a counterfeit trade-mark or property-mark (s. 486).

5. Making a false mark upon any receptacle containing goods (unless without intent to defraud) (s. 487).

6. Making use of any false-mark (unless without intent to defraud) (s. 488).

7. Tampering with property-mark with intent to cause injury (s. 489).

. There are four offences relating to currency-notes and bank-notes recently introduced in the Code.--

Currency-notes and Bank-notes.

1. Counterfeiting currency-notes or bank-notes (s. 489-A).

2. Selling, buying, or using as genuine, forged or counterfeit currency-notes or bank-notes knowing the same to be forged or counterfeit (s. 489-B).

3. Possession of forged or counterfeit currency-notes or bank-notes, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine (s. 489-C).

4. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes (s. 489-D).

Contracts of service. Ch. XIX.

Chapter XIX treats of criminal breach of contracts of service. In the following three cases the Code comes in aid of the civil law in the enforcement of contractual obligations by providing penalties against any infringements thereof. Such contracts are punishable because it is exceedingly improbable that any damages could be obtained from persons who are likely to break them—

1. Voluntarily omitting to perform a lawful contract of personal service,

(i) in conveying or conducting any person or property from one place to another, or

(ii) to act as a servant to any person during a voyage or journey,

(iii) to guard any person or property during a voyage or journey,

except in the case of illness or ill-treatment (s 490).

The contract need not be made by the person for whom the service is to be performed (expln.) [1 month or Rs. 100 or both.]

This provision does not apply to a servant hired by the month or from day to day under a contract to serve until the engagement is terminated. The liability under this section will only arise if the contract is of personal service, *e. g.*, a contract to convey coal or paddy from one place to another will not come within this section.

2. Voluntarily omitting to perform a lawful contract to attend on or supply the wants of a child, or an insane or a sick person, who is incapable of providing for his own safety or of supplying his own wants (s. 491). [3 months, or Rs. 200 or both].

Ordinary servants, such as cooks, do not come within the purview of this section.

3. Voluntarily deserting from, or refusing to perform (without reasonable cause), a lawful contract in writing to serve for a period of not more than three years, at any place in British India to which the offender has been conveyed at the expense of the person with whom he has contracted, except in case of ill-treatment or neglect by the employer in performing his part of the contract (s. 492). [1 month, or fine up to double the expense incurred by the employer, or both].

Chapter XX deals with offences relating to marriage.

Marriage. Ch. XX.

The following two provisions relate to mock or invalid marriages—

1. Co-habitation caused by a man deceitfully inducing a belief of lawful marriage (s. 493). (Ten years and fine).

2. Dishonestly or fraudulently going through a marriage ceremony knowing that no lawful marriage is thereby created (s 496). (Seven years and fine).

The latter offence differs from the former in the fact that in it the ceremony is gone through, which is valid on the face of it but invalid for some reason known to one party, or the other. The former section applies to deception practised by a man on a woman; the latter applies to an offence by a man as well as by a woman.

A person commits 'bigamy' if that person.

Bigamy.

(1) having a husband or wife living,

(2) marries in any case in which such marriage is void

(3) by reason of its taking place during the life of such husband or wife (s. 494). (7 years and fine). If the former marriage is concealed from the person with whom subsequent marriage is contracted, the punishment is ten years and fine—(s 495).

There are two exceptions in which the second marriage will not be an offence—

(1) When the first marriage has been declared void by a Court of competent jurisdiction.

(2) When the husband or wife has been continually absent or not heard of for seven years, provided that the facts be disclosed to the person with whom the second marriage is contracted.

• This section will only apply to Hindu and Mahomedan women but not men, and Christians and Parsis of either sex.

The first marriage must be a valid marriage. But a Mahomedan girl has the option, if Shia, to ratify, or if Sunni, to cancel, her marriage on reaching the age of puberty if a person other than her father or grand-father has given her in marriage.

Conversion of a Hindu wife to Mahomedanism or Christianity does not dissolve her marriage with her Hindu husband and if she marries a Mahomedan or a Christian she commits bigamy. But if a Hindu Christian convert having a Christian wife relapses into Hinduism and marries a Hindu woman, he cannot be convicted of bigamy because the Hindu law recognises polygamy on the part of the husband.

But even if he is regarded as a Christian his second marriage according to Hindu rites is no marriage at all.

Leading cases :—**R. v. Ram Kumari.**
R. v. Ganga.
R. v. Millard.

It appears, however, that a Christian cannot by embracing Mahomedanism marry a second time during the lifetime of his first wife. He cannot cast off to the winds a contractual obligation by his own act.

The rigour of the second exception is somewhat modified in *Tolson's case*, which lays down that if the second marriage takes place *within* seven years under a *bona fide* belief based on reasonable grounds that the former consort is dead, no offence is committed.

A person commits adultery, if he

Adultery.

(1) has sexual intercourse with a person,

(2) whom he knows or has reason to believe to be the wife of another man,

(3) without the consent or connivance of that man,

(4) such sexual intercourse not amounting to the offence of rape **(s. 497)** .(5 years, or fine, or both).

The inconstancies of a man are made punishable by this section, but not the inconstancies of a wife. The wife is not punishable as an abettor.

Taking or enticing away or concealing or detaining, a woman, knowing or having reason to believe her to be married, from her husband, in order that she may have illicit intercourse with any man is punishable **(s. 498).** (2 years, or fine or both).

A person is guilty of 'defamation' if he

Defamation Ch. XXI.

(1) by words either (*a*) spoken or (*b*) intended to be read, or

(2) by signs or visible representations,

(3) makes or publishes any imputation concerning any person

(4) intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person **(s. 499).** (2 years simple, or fine, or both--s. 500)

Defamation may be of a deceased person **(expln. 1).** It may be concerning a company, an association, or collection of persons **(expln. 2).** It may be by ironical expressions

An imputation harms a person's reputation which in the estimation of others, directly or indirectly, either

(1) lowers his moral or intellectual character; or

(2) lowers his character in respect of his caste or calling, or his credit; or

(3) causes it to be believed that his body is in a loathsome state, or in a state generally considered disgraceful **(expln. 4).**

The English doctrine that libel is an offence because it tends to a breach of the peace is not adopted in the Code. The definition in the Code applies to words as well as writings.

Spoken words, even if defamatory, do not amount to a crime under the English law, except when they are seditious, blasphemous, grossly immoral or obscene. The Penal Code makes no distinction between spoken and written defamation. Nor does it recognise the distinctions of English law whereby, under certain circumstances, words might be libellous if written, but are not slanderous if spoken.

The defamatory matter must be published *i. e.*, communicated to a person other than the one defamed. According to the English law if such matter is communicated to the person defamed it will be sufficient for an indictment, if it is likely to provoke a breach of the peace. The person who *makes* the imputation intending to harm the reputation

of another, as well as the person who *publishes* it are alike guilty. The publisher need not be the maker of the defamatory matter.

The publisher of a newspaper is responsible for defamatory matter appearing in the newspaper whether he knows it or not. But it will be a good jutification to plead if such matter is published in his absence and without his knowledge and the temporary management of the paper was in competent hands. A newspaper published at one place and sent to a subscriber at another will be considered to have been published at the latter place.

Exceptions. Any of the following exceptions may be set up against a charge of defamation.

1. Imputation of any truth which the public good requires to be made or published.

2. Opinion expressed in good faith respecting the conduct of a public servant in the discharge of his duties, or his character so far only as it appears in that conduct.

3. Opinion expressed in good faith respecting the conduct of any person touching a public question, or his character so far only as it appears in that conduct.

4. Publication of a substantially true report of the proceedings of a Court.

Such report cannot be published if the Court has prohibited it, or where the subject-matter of the trial is obscene or blasphemous.

5. Opinion expressed in good faith respecting the merits of a case decided in a Court; or the conduct of a party, witness or agent concerned therein; or the character of such person so far only as it appears in such conduct.

6. Opinion expressed in good faith respecting the merits of a performance submitted by the author to public judgment; or respecting the author's character so far only as it appears in such performance.

7. Censure passed in good faith by a person having lawful authority over another.

8. Accusation preferred in good faith to a duly authorized person.

9. Imputation made in good faith by a person for the protection of his interest, or of any other person, or for the public good.

The privilege of Judges, counsel or pleaders, witnesses, and parties comes under the exception.

JUDGE.—A judge cannot be prosecuted for defamation for words used by him whilst trying a case in Court, even though such words are alleged to be false, malicious, and without reasonable cause (*Raman* v. *Subramanya*).

COUNSEL OR PLEADER.—Criminal proceedings can be instituted against a counsel or pleader for uttering words that are defamatory, or are calculated to hurt the feelings of others, or are absolutely devoid of all solid foundation (*Sullivan* v. *Norton*).

The Bombay High Court has held that so long as an advocate acts on his instructions he has the fullest liberty of speech (*Bhaishankar* v. *Wadia*). Where express malice is absent the advocate or pleader would be protected (*In re Nagarji* : *Purushottamdas*).

WITNESS.—The Bombay High Court has held that a witness cannot be prosecuted in respect of statements made by him when giving evidence in a judicial proceeding (*R.* v. *Babaji*). But in a subsequent case it has expressed a doubt whether irrelevant statements would be protected (*R.* v. *Balakrishna*).

The Calcutta High Court has laid down that such statements should be relevant to the inquiry (*Woolfun Bibi* v. *Jerasat Sheikh*). If a witness voluntarily makes defamatory statements he will be guilty (*Haidar Ali* v. *Abru Mia*).

The Madras High Court is of the opinion that statements of witnesses made in the witness box are absolutely privileged. If they are false the remedy is by indictment for perjury, and not for defamation (*Manjaya* v. *Shesha Shetti*).

The Allahabad High Court has held that a witness can be prosecuted for defamatory statements concering a person unless he shows that the statements fall under one of the exceptions to this section.

PARTY.—The Madras High Court has held that if an accused puts any question, while defending himself, the question cannot be made the subject of a prosecution for defamation (*Hayes* v. *Cristian*).

The Allahabad High Court holds the view that a suitor is not absolutely privileged.

PLEADINGS that contain defamatory statements are not privileged. To be protected such statements (1) should be relevant and (2) must have been made in good faith.

10. Caution intended in good faith for the good of the person to whom it is conveyed or of some person in whom he is interested, or for public good.

Other offences. The following acts also are made punishable.—

1. Printing or engraving matter known to be defamatory (s. 501).

2. Sale of printed or engraved substance containing defamatory matter (s. 502).

A person commits 'criminal intimidation' if he

Criminal intimidation. Ch. XXII. (1) threatens another with any injury (*a*) to his person, reputation or property, or

(*b*) to the person, or reputation of any one in whom that person is interested,

(2) with intent

(*a*) to cause alarm to that person, or

(*b*) to cause that person to do any act which he is not legally bound to do, or omit to do any act which that person is legally entitled to do,

(3) as the means of avoiding the execution of such threat (s 503). [2 years or fine, or both. If the threat be to cause (1) death or grievous hurt; (2) the destruction of any property by fire; (3) an offence punishable with death, transportation, or 7 years' imprisonment, then 7 years, or fine or both—(s. 506). If intimidation is caused by an anonymous communication, then *additional* imprisonment for 2 years (s. 507).]

Criminal intimidation is closely analogous to 'extortion.' In the former the immediate purpose is to induce the person threatened to do, or abstain from, something which he was not legally bound to do or omit; in the latter the purpose is filthy lucre by obtaining property. In 'criminal intimidation' the threat need not produce the effect aimed at, nor should it be addressed directly to the person intended to be influenced. If it reaches his ears anyhow the offence is complete.

The following two provisions relate to insult offered to persons other than public servants—

Insult. 1. Intentional insult with intent to provoke a breach of the peace, or to cause the commission of any offence (s. 504).

(2) Uttering any word, or making any sound or gesture, or exhibiting any object, intending to insult the modesty of a woman or intruding upon the privacy of a woman (s. 509).

Statements conducing to mischief.

Making, publishing or circulating, any statement, rumour, or report

(1) with intent to cause any officer, soldier or sailor, in the Army or Navy, to mutiny, or to disregard or fail in his duty, or

(2) with intent to cause fear or alarm to the public whereby any person may be induced to commit an offence against the State or public tranquillity, or

(3) with intent to incite any class of persons to commit any offence against any other class

is made punishable (s. 505). (2 years, or fine, or both). The offence is not committed if such statement, &c, is *true* and there is no such intent as aforesaid.

Divine displeasure.

Act or omission caused by inducing a person to believe that he will be rendered an object of divine displeasure if he does not do or omit to do the things which it is the object of the offender to cause him to do or omit is punishable (s. 508). (1 year, or fine or both).

Intoxication.

Intoxication alone is not made punishable by the Code. But a person who in a state of intoxication appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person is liable to punishment (s. 510). (24 hours, or Rs. 10, or both).

Attempts. Ch. XXIII.

The last Chapter deals with attempts to commit offences. Attempting to commit or causing to be committed an offence, punishable by the Code with transportation or imprisonment, and in such attempt doing any act *towards the commission of the offence* is—where there is no express provision for the punishment of such attempt—punishable with transportation or imprisonment up to half the term provided for the offence itself, or the fine provided or both (s. 511).

Every commission of a crime has three stages—

(1) intention to commit it;

(2) preparation for its commission; and

(3) a successful attempt.

Mere *intention* to commit a crime, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which

shows that progress has been made in the direction of it or towards maturing and effecting it.

Preparation consists in devising means for the commission of an offence. The section does not punish acts done in the mere stage of preparation. Mere preparation is punishable only when the preparation is to wage war against the King-Emperor **(s. 122)**, or to commit dacoity **(s. 399)**.

Attempt is the direct movement towards the commission after the preparations are made. To constitute the offence of attempt there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. An attempt can only be manifested by acts which would end in the consummation of the offence, but for intervention of circumstances independent of the will of the party. An attempt is possible even when the offences attempted cannot be committed; as when a person intending to pick another's pocket thrusts his hand into the pocket but finds it empty.

If the *attempt* to commit a crime is successful then the crime itself is committed; but where the attempt is not followed by the intended consequences s. 511 applies.

Leading cases:	**R. v. Ramsarun.**	**R. v. Peterson.**
	R. v. MacCrea.	**R. v. Baku.**
	R. v. Mangesh.	**R. v. Doyal.**

As observed before, the Bombay High Court has held that an act done towards the commission of murder, but not such as could have caused death, is punishable under s. 511 (*R.* v. *Cassidy*). On the other hand, the Allahabad High Court is of the opinion that s. 307 is very exhaustive, and an attempt to commit murder, if punishable at all, must be under that section only (*R.* v. *Nidha*).

APPENDIX.

Questions selected from those set at the Bachelor of Laws and the District and the High Court Pleaders' Examinations.

CHAPTER I.

1. Under what circumstances may an offence committed outside British India be tried as an offence committed in British India? See ss. 3 and 4.

2. Describe the jurisdiction of the Indian High Courts in cases of offences committed outside British India (*a*) on land, and (*b*) on the High seas. See Comment on s. 4.

3. What is extradition and what are the conditions for granting it? See Comment on ss. 3 and 4.

CHAPTER II.

4. Define—Person (s. 11), Public (s. 12), Servant of the Queen, (s. 14) Judge s. 19), Court of Justice (s. 20), Public servant (s. 21), Moveable property (s. 22), Wrongful gain and wrongful loss (s 23), Dishonestly (s. 24), Fraudulently (s. 25), Counterfeit (s 28), Document (s. 29), Valuable security (s. 30), Act and omission (s 33), Voluntarily (s. 39), Offence (s. 40), Special law (s 41), Local law (s. 42), Illegal and "legally bound to do" (s. 43., Injury (s. 44), Vessel (s. 48), Good faith (s. 52).

5. What is the law in the Penal Code as to illegal omissions? See s. 32.

6. What is the law regarding joint offenders? See ss. 34, 35, 38.

7. If two persons commit the same act can they be guilty of different offences in respect of that act? See s. 38.

CHAPTER III.

8. By whom, and for what, may a sentence of death and of transportation for life be commuted under the Penal Code? See ss. 54 and 55.

9. What is the distinction made in the kind of punishment to which an American or European must be sentenced when the offence of which he is convicted is punishable with transportation? See s. 56.

10. What sentences of transportation can be passed under the provisions of the Code? See ss.59, 121-A 124-A and 511.

11. In what cases may transportation be awarded instead of imprisonment? See s 59.

12 Is there any limit to fine where no sum is expressed to which such fine may extend? See s. 63.

13 What are the provisions of the Penal Code with regard to character and duration of the sentence of imprisonment in default of payment of fine? See ss. 64, 66, 69, 70.

14. State fully the law of cumulative penalties as stated in the Penal Code and illustrate it by cases. See s. 71 and Comment thereon.

15. What rules are laid down for assessing punishment for offences
(a) Committed in one transaction.
(b) Falling within two definitions of the Code.
(c) Made up of acts which are offences themselves.
See s. 75.
16. What is the law regarding solitary confinement? See ss. 73, 74.
17. Does s. 75 authorize a Magistrate to pass an enhanced sentence? See s. 75.

CHAPTER IV.

18. Under what circumstances is a man justified in committing acts which would otherwise be offences? See p. 55.
19. When is the belief of legal justification a good defence? See ss. 76, 77, 78 and 79.
20. To what extent may ignorance or mistake of an essential fact be pleaded as a defence to a criminal charge? See ss. 76 and 79.
21. What do you mean by an act of state? Can an act originally wrongful become an act of state by subsequent ratification? See Comment on s. 79.
22. To what extent, if at all, and subject to what limitations, if any, will a mistake of fact afford a valid defence? See s. 79.
23. When is an act excusable on the ground of its being done by accident or misfortune? See s. 80.
24. Quote the section which authorizes a choice of evils. See s. 81.
25. In what cases is *mens rea* not an essential ingredient in an offence? See p. 62.
26. Up to what age is a child supposed to be *doli incapax*? From what age does his criminal liability begin? Discuss briefly the Indian law on the subject, pointing out the difference, if any, in the law of England. See Comment on s. 82.
27. Where does the Code follow the maxim *malitia supplet œtatem* (malice supplies defect of years)? See s. 83.
28. State the law with regard to offences committed in a state of intoxication? See ss. 85 and 86.
29. How far does consent of the person to whom, and upon whom, an act is done, take away the act from the category of offences, if without such consent it would be an offence? See ss. 87, 88, 89 and 91.
30. On what principle does law give protection to a medical man who causes death by a dangerous operation? See Comment on s. 88.
31. Mention some cases in which, even without the consent of the party affected, an act would not be an offence if done in good faith. See s. 92.
32. When is a consent invalid? See s. 90.
33. If it is shown that a communication made to a person has caused harm to such person what is a good defence? See s. 93.
34. In what cases will a plea of compulsion or necessity be a sufficient defence against a charge of criminal offence? See s. 94 and Comment thereon.
35. How far do threats prevent acts done by the person threatened from being an offence? See s. 94.
36. Explain with reference to any of the provisions of the Penal Code the maxim *de minimis non curat lex*. See s. 95.
37. State concisely the law regarding the right of private defence as laid down in the Penal Code. See ss. 96, 97 and 98.
38. What are the acts against which there is no right of private defence? See s. 99.
39. Are there any limitations to the right of self-defence? See s. 99.
40. Under what circumstances does the right of private defence of the body extend to causing death? See ss. 100 and 101.

41. "He who preserveth his own life at the expense of another man's is excusable through unavoidable necessity." Examine the correctness of this statement explaining how far it is true at the present time. See s. 100.

42. Under what circumstances does the right of private defence of property extend to causing death? See s. 103.

43. When does the right of private defence to property commence and how long does it continue? See s. 105.

CHAPTER V.

44. What is Abetment? Give a brief account of the provisions of the Penal Code relating to the abetment of offences. See ss. 107 and 108.

45. Refer to the provisions of the Code which provide for the punishment of a 'Principal in the second degree'. See s. 114.

46. State under what circumstances an abettor may be punished for an offence different from that which was abetted. See ss. 111 and 113.

47. Is conspiracy a substantial offence under the Indian criminal law? What is the difference between the Penal Code and the English law in this respect? See Comment on s. 107.

CHAPTER V-A.

47-A. Define the offence of criminal conspiracy? how it is punishable. See ss. 120-A, 120-B.

CHAPTER VI.

48. Classify the offences against the State. See p. 106.

CHAPTER VII.

49. What are the offences relating to the Army and Navy? See the Summary.

CHAPTER VIII.

50. What is an unlawful assembly? What are the circumstances which would constitute an assembly an unlawful assembly? See ss. 141, 142 and 143.

51. Explain the several ingredients of the offence of rioting? See ss. 146, 147 and 148.

52. When two opposite factions commit a riot, can they be said to form one unlawful assembly? If so, can they be tried jointly? See Comment on s. 148.

53. Describe the offences to establish which prosecution should adduce evidence to prove that the accused acted (1) 'malignantly or wantonly' and (2) 'malignantly.' See ss. 153 and 270.

54. What provisions, if any, are there in the Penal Code especially affecting persons, who own, occupy, or have an interest in, land? See ss. 154, 155 and 156.

55. What is an affray? See s. 160.

56. Distinguish between Riot and Affray? See p. 135.

CHAPTER X.

57. What are the provisions as regards wilful omission or evasion of the performance of a public duty? See ss. 172, 176, 187.

58. What are the offences which may be committed by refusing to give true information and how are they punishable? See ss. 178-180.

59. What are the offences which may be committed by giving false information and how are they punishable? See ss 171, 181 and 182.

60. What constitutes the offence of disobedience to an order duly promulgated by a public servant? See s. 188.

CHAPTER XI.

61. What acts amount to offences against public justice? See p. 159.

62. When is a person said to give False Evidence? See s. 192.

63. What is Fabricating False Evidence? See s. 192.

64. Specify the different offences created by the Penal Code with respect to collusive legal proceedings instituted for the purpose of defeating creditors. See ss. 208-210.

65. Distinguish between the 'making of a false charge' and 'institution of criminal proceedings.' See s. 211. What is the distinction between s. 182 and s. 211 of the Indian Penal Code? See Comment on s 211.

66. Under what circumstances, if any, is it no offence to accept gratification in consideration for screening a person from legal punsishment for an offence? See Exception to s. 214.

67. Briefly state the provisions of the Penal Code relating to an attempt to escape from custody. See ss. 224, 225, 225-A and 225-C.

68. You are askea to prosecute A charged with the offence of offering resistance or illegal ob truction to his lawful apprehension by the Police. What proof would you adduce? See s. 224.

69. A person who was being taken before a Magistrate for the purpose of being bound over to keep good behaviour escaped from Police custody. Can he be punished under s. 224? See p. 195.

CHAPTER XII.

70. Define 'Coin' and 'Queen's coin.' See s. 230.

71. Can you assign any reason why heavier punishment is awarded for counterfeiting Queen's coin than for counterfeiting any other coin? See p. 203.

72. Describe the various classes of offences relating to coin. See ss. 231-254.

73. What are the offences relating to the Government stamps? See ss. 255-363-A.

CHAPTER XIII.

74. What are the offences relating to Weights and Measures, and how are they punishable? See ss. 264-267.

CHAPTER XIV.

75. What is a Public Nuisance? See s. 268.

76. What are the offences affecting the public health? See ss. 269-278.

77. What are the offences relating to public safety? See ss. 278-289.

78. How far does the maxim *volenti non fit injuria* or, in other words, the doctrine of contributory negligence, apply in criminal cases? See pp. 70, 264.

CHAPTER XV.

79. What are the offences relating to Religion? See ss. 295-298.

CHAPTER XVI.

80. Define the several offences affecting human life dealt with by the Code. See Chap. XVI.

81. What is Culpable Homicide? See s. 299.

82. When does Culpable Homicide amount to Murder? See s. 300.

83. When does Culpable Homicide amount to Murder ? See Exceptions to s. 300.

84. Is the discovery of the dead body absolutely necessary in a murder case in India? What was understood in England by *corpus delicti?*

85. State fully the circumstances under which the offence of murder can be reduced to one of culpable homicide not amounting to murder. See Exceptions to s. 300.

86. Is there any offence the attempt to commit which is punishable under the Code, but not the commission of the offence itself? See s. 309.

87. Define Thug. See s 311.

88. Define Hurt. See s 319.

89. What is grievous Hurt? See s. 320.

90. Distinguish between 'wrongful restraint' and 'wrongful confinement'. See s. 339.

91. What are the aggravated forms of wrongful confinement? See ss. 343–348.

92. Define Force. See s. 349.

93. What is Criminal Force? See s. 350.

94. What is Assault? See s 351.

95. What are the aggravated forms of the offence of assault! See ss. 353-357.

96. Point out how you would determine whether an act causing death amounted to murder, culpable homicide not amounting to murder, voluntarily causing grievous hurt, or causing death by rash and negligent act.

97. What are the ingredients of the offence of kidnapping? See s. 361. Is the consent of the party kidnapped to be taken into consideration? See Comment on s. 361.

98. Define Abducting. See s. 362. How does it differ from kidnapping? See Comment on s. 362.

99. What are the aggravated forms of the offence of kidnapping? See ss. 364-368.

100. State the provisions of the Penal Code as regards slavery. See s. 371.

101. What is rape? See s. 375.

CHAPTER XVII.

102. State in general terms the three classes of offences against property with which Chapter XVII deals pointing out the distinguishing features of each class. See Summary.

103. What are the offences against property punishable under the Indian Penal Code? Wherein do they all resemble each other? Classify them according to the nature of the property (moveable and immoveable or both) to which they apply? See Summary.

104. Define Theft. See s. 378.

105. Discuss the question whether a husband can successfully prosecute his wife for stealing his property according as the parties are Europeans, Hindus, or Mahomedens. See p. 322

106. Compare the crime of theft with the corresponding offence under the English law. See p. 314.

107. Give the aggravated forms of the offence of theft? See ss. 380, 382.

108. What constitutes Extortion? See s. 383.

109. Give the aggravated forms of the offence of extortion. See ss. 385, 389.

110. What are the ingredients of the offence of robbery and dacoity. See ss. 390 and 319.

111. Explain Criminal Misappropriation? See s. 403.

112. What is Criminal Breach of Trust? See s. 405.

113. Give the aggravated forms of the offence of Criminal Breach of Trust. See ss. 407-409.

114. What is 'stolen property' and 'receiving stolen property'? See ss. 410 and 411.

115. Define Cheating. See s. 415.

116. Under what circumstances would a misstatement by a shopkeeper in regard to the value of a quality of an article which he sold amount to cheating? See Comment on s. 415.

117. Explain Cheating by Personation. See s. 416.

118. What are the offences relating to fraudulent deeds and dispositions of property? See ss. 421-424.

119. Analyse the offence of Mischief? See s. 425.

120. Define Criminal Trespass. See s 441.

121. What is House-trespass? See s. 442.

122. What is Lurking House-trespass? See s. 443.

123. Describe the several elements which go to make up the offence of house-breaking? See s. 445.

124. Give the aggravated forms of the offences of house-trespass. See ss. 449-452.

125. Give the aggravated forms of the offences of lurking house-trespass or house-breaking. See ss. 554-459.

CHAPTER XVIII.

126. Define Forgery. See s. 463.

127. What constitute "false document"? See s. 464.

128. Explain the circumstances under which a man's signature of his own name may amount to forgery. See explanation 1 to s. 464 and illustrations (*a*) to (*e*) to that Explanation.

129. What are the aggravated forms of forgery? See ss. 466 and 467.

130. What is Trade mark? What is using a false Trade mark? See ss. 478, 480.

131. What is Property mark? What is using a false Proprty mark? See ss. 479, 481.

CHAPTER XIX.

132. What breaches of contract are punishable as criminal in India? See ss. 490 and 491 and Comment.

133. What reasons do you assign for this departure from the ordinary rule that a breach of contract forms the ground for a civil action only? See p. 413.

CHAPTER XX.

134. What is Bigamy? See s. 491.

135. Under what circumstances would a woman, who in the life-tim of one husband marries another, not be guilty of bigamy? See Exception to s. 494.

136. Define Adultery. See s. 497.

137. Distinguish 'adultery' from 'rape.'

CHAPTER XXI.

138. What is Defamation? See s. 499.

139. Summarize the law of Defamation as laid down in the Code. See s. 499 and Explanations and Exceptions.

140. What are the exceptions which may be set up against a charge of defamation? See Exceptions to s. 499.

141. In a charge for defamation is it sufficient defence to prove

(a) that the statement is true; or

(b) that it is copied from a newspaper the editor of which has not been prosecuted for defamation? See Comment on s. 499.

142. What is the law relating to the defamation of a corporation? See Explanation 2 to s 499.

143. State the chief points of difference between civil and criminal action for defamation. See Comment on s. 499.

144. Can a brother-in law prosecute another for defaming his sister-in-law? See Comment on s. 499.

CHAPTER XXII.

145. Define Criminal Intimidation. See s. 503.

146. State the provisions of the Code with regard to insult offered to persons other than public servants. See ss. 504 and 509.

147. Is intoxication alone made punishable by the Code? What are the essential ingredients of this offence? See s. 510.

CHAPTER XXIII.

148. What attempts to commit offences are punishable under s. 511 of the Code? What must be proved in order to support the conviction of an attempt under the section? See s. 511.

149. How would you distinguish 'preparation' from 'attempt'? See Comment on s. 511.

150 Enumerate some of the attempts to commit offences which are punishable under the Code. See Comment on s. 511.

151. Can a conviction be sustained for attempting an offence which was in fact impossible? See Comment on s. 511.

INDEX.

∴ The figures refer to sections and pages.